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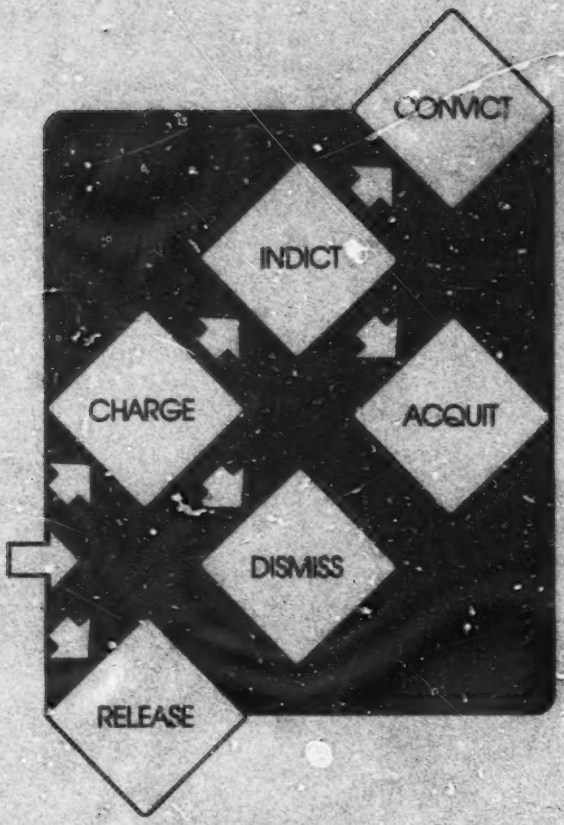

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- Tests and demonstrates new and improved approaches to strengthen the justice system, and recommends actions that can be taken by Federal, State, and local governments and private organizations and individuals to achieve this goal.
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James L. Underwood
Acting Director

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POLICY AND PROSECUTION

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January 1982

U.S. Department of Justice
National Institute of Justice

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National Institute of Justice
James L. Underwood
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PREFACE

This report, Policy and Prosecution, is one of four published as a result of a three-year research project on prosecutorial decisionmaking in the United States. It presents a conceptual model for analyzing the prosecutive decisionmaking function from a policy perspective; summarizes the findings of a comparative examination of ten prosecutors' offices; and supplements the results of the on-site studies with information gathered by a nationwide survey of eighty urban prosecutors.

The other three reports issued as a result of this research are:

Prosecutorial Decisionmaking: Selected Readings, represents a collection of papers addressing one or more of the phases of the research project, including methodology and analysis of findings.

Prosecutorial Decisionmaking: A National Study, presents the major findings of testing over 800 prosecutors throughout the United States. It examines prosecutorial discretion, its level of uniformity and consistency both within and between offices and the factors used by prosecutors in making discretionary decisions.

The Standard Case Set: A Tool for Criminal Justice Decisionmakers, explains how the set of standard cases can be used by an agency for management, training and operations.

If further information is desired, the reader is advised to contact the authors.

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I. POLICY AND PROSECUTION

INTRODUCTION

This research report documents one component of a comprehensive effort to examine and analyze the dimensions of uniformity and consistency in prosecutorial decisionmaking. The way in which the prosecutor makes decisions about charging crimes and handling criminal cases has a profound effect on the quality of justice rendered in American courts. If the same objective standards are applied consistently to all defendants, the goals of equal protection under the law are advanced; if case decisions are made without reference to uniform standards, the danger exists that criminal law will be applied arbitrarily and capriciously.

Reiss (1974) distinguishes between "two related but different ideas . . . in the traditional definition of justice." The first considers the "justness of applying certain sanctions," such as capital punishment, imprisonment or fines. The second refers to the "distributive property of justice." It questions whether equals are treated equally regardless of reward or cost. It is based on the assumption that "unequal treatment is inherently unjust or discriminatory."

Society may designate a number of "just" sanctions to form the legal base for its system of criminal justice. These designations then become a matter of public policy, within the purview of the citizens and their elected representatives. The inconsistencies that exist, even today, among different political subdivisions with respect to what the community feels is a "just" punishment for a crime, generally arise from the state and local dominance of the criminal justice system and the locally-elected nature of its major participants--the prosecutor, the court, and the city or county supervisors. Disagreements in defining what constitutes just sanctions for various crimes and criminal activity are more the rule than the exception. Although they raise significant questions about how society evaluates the acceptability of these various forms of justice, they are beyond the scope of this research.

It is the "distributive" property of justice, the second element in Reiss' discussion, that this research addresses. This property is not so much a public policy issue as it is an issue of procedural fairness and good management practices. It is to this property that the issues of uniformity and consistency relate most and to the prosecutor as its implementator.

This is because the prosecutor, more than any other component of the criminal justice system, possesses a discretionary power that overwhelms the discretion of others. As a result, prosecutorial discretion is either criticized or supported, but rarely ignored. The Wickersham Committee (1931) was shocked to see the extent of his power; and reports of abuse and corruption are many, (see for example, Teslik, 1975). Some reformers moved for the establishment of totally new

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systems of prosecution (Goldstein and Marcus, 1977)--an unrealistic task that belies the roots, heritage and evolution of the American prosecutor as a locally-elected official endowed with discretionary power. The National Advisory Commission on Criminal Justice Standards and Goals (1974) took an ambivalent position, condemning the discretion used in plea bargaining but urging the expansion of screening, diversion and other discretionary modes of operation.

At the core of this controversy is the fundamental, and as yet unanswered, question of the extent to which prosecutorial discretion creates or contributes to unequal treatment which is inherently unjust or discriminatory. Three factors emerge as needing attention. The first is the extent to which prosecution is able to control or influence the uniform and equal distribution of justice. It is inherently inconsistent to evaluate any agency or function in terms of that which is beyond its control. The second is the policy of the local prosecutor as it sets a course of action for the office. Prosecutorial policy takes on significance because the nature and characteristics of the environments in which criminal justice systems operate create room for different approaches to crime and prosecution. The third factor is whether the policy selected by the prosecutor is being implemented in an even-handed and fair manner. If a choice is available from among a pool of prosecutorial policies, and this choice is supported by the local community, then one must determine next whether the stated policy is being implemented and and whether justice is being distributed equally within this policy framework.

The research described here focused on the dimensions of this last issue. The project was conducted in two phases. In phase I, the prosecutive function in ten different jurisdictions was examined from a policy perspective by the project staff. Through on-site visits, those aspects within prosecutorial control were studied to determine what was important to the selection and implementation of policy; to identify and describe the types of policies that were found; and to isolate the factors that appeared to be important in achieving uniform and equal implementation. After this qualitative assessment, the findings were used to design a nationwide survey of urban prosecutors which was distributed in phase II. Large jurisdictions (over 450,000 population) were the target of this quantitative study since policy implementation and transference was assumed to be most difficult in large offices.

The purpose of this survey was to see if prosecutorial styles or policies could be discerned from some of the objective factors identified as important by the on-site visits. The results show that this was partly accomplished in that various styles of prosecution could be shown to produce significantly different dispositional patterns. But the identification of specific policies such as system efficiency as contrasted with trial sufficiency (Jacoby, 1977) still eluded quantification.

Of equal importance, however, was the documentation of the state of the art of prosecution today in the United States. Its variations, diversities and their effect on dispositions are recorded and presented here. The results of surveying eighty large jurisdictions indicate the

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breadth and scope of variety in the prosecution function and the prevalence of certain forms of operation. The results of both the qualatative analysis in Phase I and the quantitative analysis in Phase II are incorporated in this report.

Qualitative Analysis

The prosecutors participating in the qualitative analysis represent jurisdictions ranging in population size from 165,000 to more than 2.5 million. Geographically dispersed, the offices offered 10 state constitutional and legislative environments for examination and as many different local criminal justice system environments. In order of jurisdictional size, the prosecutors participating are:

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The identification of the prosecutorial policy in the office used the typology of charging policies developed in earlier LEAA studies (Jacoby, 1977). These studies identified four distinct types of charging policies which affect the subsequent processing decisions of the prosecutor. They were called: Legal Sufficiency, System Efficiency, Trial Sufficiency and Defendant Rehabilitation. The typology hypothesized that the existence of a specific policy type could be objectively determined by examining several key elements, including the criteria used for charging; the specific legal or operational strategies employed; the organizational structure; resource allocation patterns; and management procedures and controls. The conclusion was that the combination of these factors produced expected dispositional patterns that were so different among policy approaches that the policy first had to be identified before any tests for uniformity and consistency in an office could be made. The testing of this hypothesis became an integral part of the research activity. It structured the analytic approach used and the evaluation of the findings into conclusions that relate to policy and its implications for prosecution.

Site visits were conducted over a six-month period from March through August, 1978. Members of the project staff and consultants combining experience in management and systems analysis, prosecution, statistics and the social sciences were formed into teams of three to five persons depending on the size of the jurisdiction. Each team spent a week interviewing the decisionmakers in the prosecutor's office, other members of the local criminal justice system, and collecting and assembling descriptive and qualitative data about the operations and policy of the office.

Using the functional approach developed from the conceptual analysis of policy, each of the major process steps in the office were studied. This included intake, the accusatory process, trials and dispositions, postconviction and special programs. Each process step was examined independently with respect to how the work came into the process, who made what decisions within the step, and where it went after leaving the process. Particular attention was given to whether the decisionmaker in the preceding process step was aware of the results of his decision or held accountable for them. After independent examinations were made, they were combined and analyzed for their consistency with one another and with the overall policy of the office. This was achieved by staff and consultant evaluations. To ensure consistency and standardization in using this technique among the ten sites, instruments were developed for the interview and the data collection activities. Field notes were developed in standardized format and the final results summarized in this report.

There are, of course, limitations to a qualitative analysis of a function that should be noted. First, viewing the prosecutive function from the policy perspective developed in Chapter II of this report represents a relatively new analytical approach to this subject. While the techniques for analysis have been in use in other fields of public administration for at least the past three decades, the application of

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them to prosecution in a policy perspective and in ten sites was unprecedented. Because of this, we make no claim that this study has pursued the rigorous application of management, organizational or systems analysis techniques. Rather, it indicates the validity of pursuing such approaches in a more explicit manner.

Second, the policy typology used as the conceptual basis for this study had been derived from observations in four sites and verified as existing in three. Thus, the construct of the study and the scope of the analysis was derived from narrow and limited observations. Part of the task set before the project was not only to examine policy and its implications, but to test the validity of this typology and the analytical approaches it suggests. No claim is made at all, even now, that this subject has been exhausted and what is presented are the final dimensions of this approach. Indeed, Chapter IV points conclusively to a broadening of the conceptual approach and a need for continuing research.

Finally, the conclusions drawn by the staff represent their own qualitative assessments of the observations made in the field. Although their cumulative experience over the past 10 years is extensive--having worked in, provided technical assistance to, studied or evaluated more offices than probably any other similarly constituted group in the United States--this is no guarantee that the insights gained from this research and reported herein are final or definitive. Other interpretations and analyses may have equal validity, or even refute some of these findings.

Quantitative Analysis

The lack of quantifiable information with regard to individual policy types and insights based on a sample of only ten sites provided the basis for the second phase of this research. Clearly, there was a need to devise a set of measures, delineate broad categories of variables into conceptually relevant statements and use less expensive techniques to take more precise measurements of specifically defined variables. The data collected in Phase I not only highlighted these needs but also demonstrated that much of the data presently available has been produced to answer questions other than those that measure policy effects. Among the ten offices visited during Phase I, only one (Wayne County, Michigan) had disposition data available in a form directly usable by the project staff.

Methodology

A survey was designed to gather relevant information from urban prosecutors, defined as jurisdictions having populations of at least 450,000. The survey instrument was mailed to 124 of these urban

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jurisdictions throughout the United States and the results presented here are based on responses from eighty jurisdictions. No missing data or not applicable responses are included. Therefore, the statistics presented may have a non-response bias built into them but they do not have a non-relevant bias. Since the survey is considered here to be, in one sense, a prototype for further research, some of these weaknesses are not as significant when viewed in this perspective.

The primary purpose of the survey was to highlight diversity in styles of operation and identify and describe policy types of prosecution as they exist in the larger, urban offices. The survey was constructed using the conceptual frame developed from the qualitative, on-site research. The instrument examined the various activities and functions performed in processing criminal cases. For each of these activities the results of the decisionmaking processes were described and measured. By examining prosecution by its process steps, beginning with intake and moving into the accusatory, trials and postconviction areas the survey was capable of yielding comparisons among diverse conditions. This flexibility makes it a valuable technique for comparative analysis.

Independent of its structure or its procedures, each criminal prosecution process point can be measured by a dispositional outcome. The intake function can be measured by the amount of screening done in making the decision to accept or reject cases for prosecution. The accusatory function can be assessed by determining whether or not it is used as a major dispositional exit point. The trials function can be measured by the amount of discretion afforded assistants in bringing cases to an acceptable disposition. Finally, the postconviction function can be measured by the amount of input the prosecutor has in areas such as sentencing recommendations or opposition to pardons or parole.

The survey also examined the organizational structure of the prosecutor's office. It was assumed that the organization of an office would be highly associated with the policy and style of operation of the prosecutor. Determining the amount of control on discretion and feedback from bureau chiefs to assistants was, therefore, included in this investigation.

The survey was conducted to determine: 1) if there were discernible types of prosecution in the United States; and 2) to see if these types could be equated with policy typologies. The results of the analysis demonstrated that certain types of prosecution styles could be identified and that these groupings had an effect on the processing of a criminal case. However, it was not possible to determine policy types from the survey. There were many variations in case processing that did not lend themselves to policy categorization.

Nevertheless new insights did result from the analysis of the survey data. The effect of transferring the intake function to the police or court lessened the control exercised by the prosecutor and

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placed him in a more reactive position. In those jurisdictions where the primary accusatory procedure was from arrest to direct filing of an information, the lack of a review mechanism in this accusatory process shifted a larger proportion of cases to the trial phase for disposition.

The results of the analysis of the survey data also indicated that policy and structural variations have a significant impact on the place and type of dispositions. One point was abundantly clear: diversity abounds in prosecutor's offices as each carves a policy-based operational framework within local criminal justice environmental constraints. This confirmed the initial hypothesis that prosecutorial operations or dispositional patterns cannot be evaluated unless differences due to environment or policy are taken into account.

Summary

Some general principles emerge from both activities. They are that: (1) policy choices do exist and that the prosecutor selects one of them for a variety of reasons; (2) the selection of a specific prosecutorial policy generates the need for organizations and procedures that are consistent with the policy; (3) conversely, it is possible to be inconsistent in the implementation of a policy thereby creating an unstable environment--namely, one which cannot maintain itself over time; (4) the effect of policy can be observed in the organization, management and dispositional characteristics of the office and, (5) the conclusion can be drawn that to determine whether justice is being distributed fairly and equally, one must first take these policy goals into consideration.

Organization of this Report

The rest of this report integrates the qualitative and quantitative aspects of this research. Chapter II (Policy and the Prosecutive Function) discusses the concepts of policy and policy analysis, relating it to the prosecutive function. The conceptual frame for policy analysis which was used as the model for this research is presented.

Chapter III (The Application of Policy in the Office of the Prosecutor) describes the varying characteristics and procedures employed by the different jurisdictions. Each of the process steps through which prosecution progresses (intake, accusatory, trials, postconviction and special programs) are noted along with the important factors that allow a reasonable interpretation of what policy is being followed. These descriptions are supplemented by data obtained from the survey of urban prosecutors. They indicate not only diversity in styles of operations but where significant, show some relationships that result from them.

Chapter IV (Findings and Conclusions) reports the findings of this research and translates them into conclusions. It evaluates the utility of adopting a policy analysis approach, discusses the various

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policies and prosecutorial styles, and translates the findings into some principles and rules that appear to explain some of the relationships, operational and other, that exist within an office as well as among the other components of the criminal justice system.

Frequency distributions from the survey of urban prosecutors are presented in Appendix A. The survey instrument is contained in Appendix B.

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II. POLICY AND THE PROSECUTION FUNCTION

Policy may be defined as "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; a settled course adopted and followed by government, institutional body or individual" (Webster, 1949). Two types of policymaking activities are identifiable: proactive policy which plans for future events, and reactive policy which results from the necessity of dealing with current problems. Both of these activities share a common element--decisionmaking.

According to political scientists Raymond Bauer and Kenneth J. Gergen (1969), there are at least three distinct kinds of decisions: the routine, the tactical and those that rise to the level of policy. It is the final type with which this report is primarily concerned, although the importance of tactical decisions will also be considered.

Policy is implemented through a variety of means, including organizations, programs, and as indicated above, decisions. Individual decisions are the way in which policy is made manifest. They produce outcomes which, in turn, may become the means by which the effectiveness of a policy may be evaluated.

The identification of a specific policy can be approached in two ways. One way looks for articulated policy, that is, the expression of goals by organizational leaders. The second approach isolates actual policy through induction by analyzing the decisions, programs and structures of the operating system. A complete analysis approaches policy from both a deductive and an inductive viewpoint, rendering a picture of what a prosecutor's articulated policy is and what his actual, working policy is. Although ideally the two would be identical, there are often substantial discrepancies.

These inconsistencies or discrepancies may be due to internal organizational or management problems, external constraints that restrict the implementation, or even personal bias. By identifying inconsistencies, the policy analyst gains an indication of the gap between the ideal (articulated) and the real (actual) policy.

Policy analysis has been defined as "the systematic investigation of alternative policy options and the assembly and integration of the evidence for and against each option" (Seckler-Hudson,1948). The technique first emerged in the United States after World War II and surged forward in the succeeding decades. Political scientist Yehezkel Dror (1967) authored a seminal article on policy analysis, calling for the acceptance of the policy analyst as a unique professional occupation, armed with its own discipline.

Dror's approach to policy analysis is specially adapted to consider the subjectivity and complexity inherent in the political process. It is well-suited to the evaluation of such public systems as the office of the prosecutor. Dror notes that policy decisions can be measured by a definable systemic output--in this study, the disposition

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of cases in a prosecutor's office. Yet Dror also cautions that policies cannot be evaluated simply in light of final outcomes but must be considered and analyzed in terms of the framework of the system and the environment in which the system operates. The result of applying Dror's perception of policy analysis to evaluating policy in local governmental units or offices is to establish a dual approach that focuses on predetermined statistical indicators of achievement, and on the management and organizational analysis of the framework within which the indicator is generated. This report takes the conceptual framework and approach developed by policy analysis to study the different types of prosecutorial policies that have been observed in operation and to analyze their effect through a systematic survey of urban prosecutors.

Social Control, the Law and Prosecution

Prosecution is a proportionately small application of the law as a sanction within a wider environment of social control. It addresses criminal cases " . . . an undetermined and highly unrepresentative small set of situations, probably represent(ing) an extreme last resort in the process of control" (Feeley, 1976). Within this narrow sphere of legal activity, the prosecutor is the chief practitioner of criminal and sometimes civil law and symbolizes the interest of the state and the public in maintaining a lawful and orderly society.

The key to understanding the nature of prosecutorial policy lies in understanding the nature of the prosecutor himself. He is shaped by three distinct and important functions--legal, political and bureaucratic. In his legal function he is the chief law enforcement official in his jurisdiction; as a politician, he generally holds his office as a result of popular election; and as a bureaucrat, he is responsible for managing the operations and resources of a public agency. The prosecutor's function is also discretionary: within a framework of state law and a local economic situation, he has the latitude to choose between alternative courses of action. To the extent that external variables--those influences outside the prosecutor's control such as the size of his jurisdiction and the amount of funding available to him--can be accounted for, his discretionary choices define the policy of the office and are the basis upon which his performance should be evaluated.

The policy choices made by a prosecutor are shaped by the environment in which he operates. Outside forces exert a continuous influence on the prosecutor's decisionmaking process and play a significant role in determining the characteristics of his office. Research started in the early 1970's by the National Center for Prosecution Management (NCPM, 1972) attempted to measure the relative importance of many of these environmental forces, and to identify those which seemed to have the greatest impact on the prosecutor's character. The variable which proved statistically to be the most important was the size of the population in the prosecutor's jurisdiction. Other environmental factors which significantly affected prosecutorial operations generally focused on the characteristics of the criminal justice system in the prosecutor's jurisdiction.

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A locally-elected prosecutor operates within a societal environment that expects him to be responsive to the community's political process, value systems and priorities concerning the enforcement of the law. Therefore prosecutorial discretion must be tempered by the community's standards for law enforcement and justice. Obvious examples of policy decisions made within a political context are the decisions as to whether or not to prosecute such crimes as the sale and distribution of pornography, possession of marijuana or soliciting for prostitution.

When one speaks of the policy of the prosecuting attorney, it is generally in reference to the charging process and the decisions made there because it is at this process point that the prosecutor's discretionary decisions are most clearly visible. There are three constant ingredients in the charging decision: (1) the seriousness of the crime, (2) the criminal record of the defendant, and (3) the evidentiary strength of the case. The rejection and acceptance rates in a jurisdiction give vital clues to prosecutorial policy and preference as it operates within a system of constraints.

Prosecutorial Policy--A Typology

Whatever his environment, every prosecutor operates with a policy. The policy may have been inherited from a predecessor, it may be the position taken on an election platform, or it may simply be a reflection of the prosecutor's personal philosophy and assessment of the jurisdiction's needs. Nevertheless, all policies, regardless of origin, are implemented within the following set of considerations:

- o The jurisdictional environment.
- o The prosecutor's perception of his role in dealing with crime and providing prosecutive services.
- o The available resources for the implementation of policy, including finances, personnel, space and equipment.
- o The prosecutorial strategies that are available for his use such as discovery, plea bargaining and sentence recommendation.
- o The decisionmaking process in the office of the prosecutor.

The relationship between the process of policy choice and implementation can be graphically depicted as shown in Figure 1:

It assumes that the prosecutor's policy is implemented through an organizational structure which allocates resources and establishes organizational and management procedures to operate programs. Programs use various prosecutorial strategies which, while common to jurisdictions within a state, may vary among states because statutory law or court decisions may preclude certain usages. The result of these programs may be observed in decision choices that produce observable

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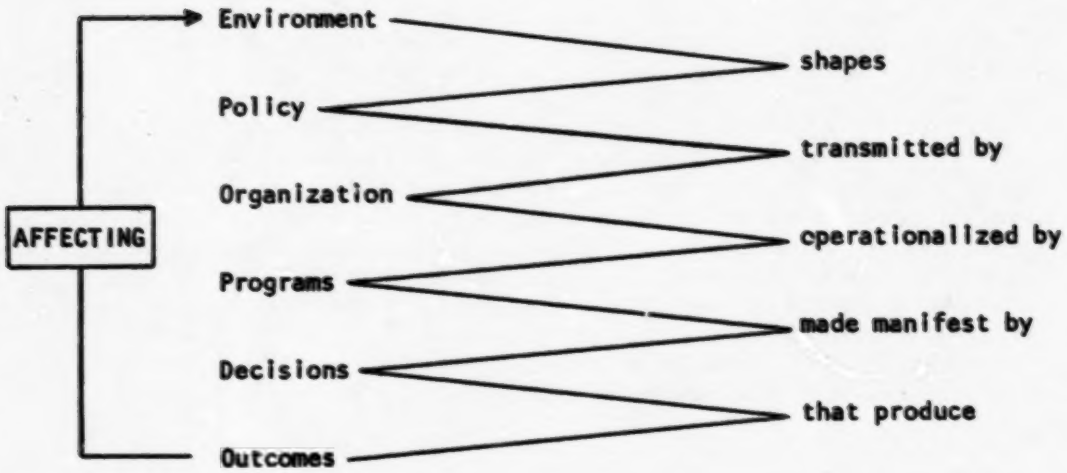
FIGURE 1

A SCHEMA FOR EXAMINING THE DIMENSIONS OF POLICY



and measurable outcomes. These, in turn, may affect and change the environment.

A policy typology was originally proposed by Jacoby (1977) that distinguished four separate charging policies:

- o Legal Sufficiency
- o Trial Sufficiency
- o System Efficiency
- o Defendant Rehabilitation

This typology was created to explain variations in emphasis and operations observed in prosecutors' offices. Its validation was undertaken here and resulted in two adjustments. First it was originally assumed that the intake function existed and had not, either by tradition or choice, been transferred to another agency, generally the police. This assumption had to be relaxed and a new one introduced that permitted the transfer of the intake function and introduced the absence of charging authority. The result was to produce a profoundly different structure of operation derived from little prosecutorial control over the intake process.

Second the original typology included a defendant rehabilitation policy. Its validation was not possible using the criteria established for validating the other policies because it was not process oriented. Hence it could not be evaluated by process system outcomes or dispositions. Because of this, it was felt that this "policy" should not be accepted as legitimate to this study.

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The conclusions drawn from this research therefore are based on three separate charging policies. Although they may not represent the complete set of policies available, they are sufficient to show the effect of policy on dispositional patterns. Each carries with it a philosophical underpinning, a set of programs, a particular resource allocation plan and a specific network of strategies and decisions designed to achieve expected outcomes.

1. Legal Sufficiency has the lowest charging acceptance criteria of all the charging policies and requires the fewest organizational controls for implementation. With this policy, if the legal elements of the crime are present, then the prosecutor's office will charge. The cursory screening given a case rarely notes constitutional or evidentiary issues that might subsequently affect its course. A policy of Legal Sufficiency is amenable to lower (misdemeanor) courts or others having high volume workload. Because few declinations for prosecution are made at intake, a variety of dispositional routes are needed for later use. These including pleas, dismissals, etc. to reduce the work and not overload the courts.

2. System Efficiency has a goal of speedy and early case dispositions. System Efficiency strives to move the docket by the efficient use of all dispositional routes available to the prosecutor. In addition to favorable outcomes, the time to disposition and the location in the process where disposition occurs are all equally important measures of success. System Efficiency places emphasis on the front part of the system, emphasizing pretrial screening, plea bargaining, diversion and the referral of cases to other courts or criminal justice agencies. The fullest utilization of the prosecutor's discretionary charging authority and coordination with the court as well as other components of the system mark this policy's goal to "move the docket."

3. Trial Sufficiency has the most rigorous implementation requirements of all the policies. Oriented toward the trial process stage, cases are accepted for prosecution only if they are capable of being sustained at trial; and once charged, the charge is rarely changed. Implementation of this policy mandates management control systems to ensure that the initial charge is not modified or dismissed and that plea bargaining is kept at a minimum. Intake and case review assume priority status in the office; rejection rates are high, dismissal rates low and plea bargaining occurs only under exceptional (and justifiable) circumstances. Court capacity is also essential to this prosecutorial approach.

A comparison of these three charging policies as a typology sets a foundation on which analysis can be conducted. One can assume dispositional patterns are attached to each charging policy; and conversely, that without a knowledge of the prosecutorial charging policy, the interpretation of disposition patterns is meaningless.

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Decisionmaking

At the heart of the policy models is the decisionmaking process, for it is ultimately the decisions made and the outcomes produced that should signal the type and effects of the policy in force. The decisionmaking process reflects individual choices between alternative actions at each stage of prosecution. Decisions vary, as does the availability of the choices. The cumulative effect of all the decisions contributes toward attaining a pre-established goal.

Decisionmaking theory was first advanced as part of economic theory. It is only within this century that theoreticians have come to grips with decisionmaking in the context of politics and government. Political theoretician Herbert Simon (1957) and Simon and March (1958) challenged the application of classic economic tenets to political or governmental decisionmaking. Simon posited that decisionmaking in this context was much less rational than had been supposed and the term he applied to the process was "bounded rationality." By this he meant that the amorphous nature of political activity did not always lend itself to absolute certainty about the number of choices available at a given time. This resulted in no clearly definable order of choices or preferences for decisionmakers. Bounded rationality required less than optimal choice, and Simon noted that political decisionmaking was more a matter of "satisfising" than optimizing. Simon's approach to the issue of political decisionmaking may be disturbing, but it is realistic. It also raises for consideration some of the problems that complicate the decisionmaking process in the political arena. These include recognizing the crisis component in decisionmaking, the insertion of the decisionmaker's personality into his choices, and the organizational limitations to rational decisionmaking.

In addition, there are several characteristics of decisionmaking as a process that need to be taken into consideration; among them the amount of information that is available when the decision is to be made and the increasing ambiguity of decisionmaking when the number of actors involved in the decision increases.

Prosecutorial decisionmaking conforms closely to the bounded rationality concept. The practical implications of criminal justice and the pressures of the modern criminal courts place very definite limits on the variables involved in the prosecutor's decisionmaking. A crisis atmosphere often exists, decisions are generally based on less than complete information and the effects or probable consequences of a decision cannot be specified.

For the prosecutor, the decisionmaking process starts with the charging decision and ends with the disposition of the case. All decisions along the caseflow process anticipate some end result that is evaluated with respect to what should be done at a particular process point with a particular defendant involved in a particular offense.

The basic caseflow through the prosecutor's office may be separated into four process steps:

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1. Case intake and initial screening;

2. The formal accusatory process;

3. Trial preparation and trials; and

4. Postconviction activities.

At each of these steps there are distinct decisions that have to be made by the prosecutor. These are summarized in Figure 2.

To examine policy, one must look not only at the aggregate dispositional patterns which provide measures of effectiveness, but also analyze the individual process steps and their activities. An analysis of the prosecutor's management and operating procedures at each stage will reveal whether they are consistent with the overall policy choices of the office. By examining the effects of policy as displayed through decision statistics, one should be able to determine the prosecutor's policy. This assumption was tested at the ten sites and by the survey of urban prosecutors.

FIGURE 2

AN ILLUSTRATION OF THE DECISIONMAKING FUNCTION WITHIN PROCESS STEPS

Process Step	Decision	Examples of Choices
INTAKE/SCREENING	Charging	Reject all charges Accept for prosecution
ACCUSATORY PROCESS	Arraignment	Grand jury indictment Bill of information Remand to lower court
TRIAL PREPARATION	Disposition	Trial Plea negotiation Nolle prosequi Dismissal
POSTCONVICTION ACTIVITIES	Incapacitation	Sentence recommendation Parole opposition Pardon Opposition Expungement

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The Organizational Perspective

A prosecutor seldom acts unilaterally in taking specific steps toward achieving his goals. He activates his policy by mobilizing a group that is under his direct control and constituted by assistant prosecutors, clerical staff, investigators and others. A necessary concomitant of the prosecutor's interaction with these persons is the process of communication itself and the structure of the group with which he communicates.

The emergence of organizations as one of the predominant factors affecting life in modern societies has been noted by many observers (Blair, 1956; Simon and March, 1958; Parsons, 1960). Several theories and models have been advanced to explain organizational behavior, with recent research tending toward the view that organizations are highly complex and sophisticated entities with multiple goals and formal and informal channels of communication (Champion, 1975; Rothschild-Witt, 1979).

Prosecutor's offices share many of the problems and characteristics of other organizational structures, although some major distinctions are evident. The core of a prosecutor's staff consists of attorneys with a more or less common background or professional orientation. Consequently, prosecutor's offices more often resemble collegially structured professional organizations than strictly bureaucratic organizations in which autonomy and peer control are not as evident. The extent to which this relationship prevails will vary among offices.

It should be apparent that communications both through articulated and non-articulated channels are a crucial element in the very concept of organization. Indeed, it is often difficult to separate communications from the distribution of power and authority

Figure 3 diagrams a simple organization with the communications channels that might be recognized as official and prescribed shown in heavy black lines; but other channels may also exist as shown by the lighter, dashed lines. What is important is that the existence of informal channels of communication be recognized and included in any examination of policy transference. Of course, there are a variety of media and situational settings in which messages are incorporated as they pass through communication channels, some of which are suggested by Figure 4.

In general, research on organizations indicates that for institutions performing non-routine tasks requiring the solution of complex problems and dominated by relatively autonomous experts, the free flow of communications tends to produce greater organizational effectiveness.

This would seem to suggest that a prosecutor's policy might be better implemented within an open communications system, having high feedback, by a structure that is not too hierarchical, and which deemphasizes programmed procedures. Yet these conditions exist more in

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FIGURE 3

POTENTIAL COMMUNICATION CHANNELS

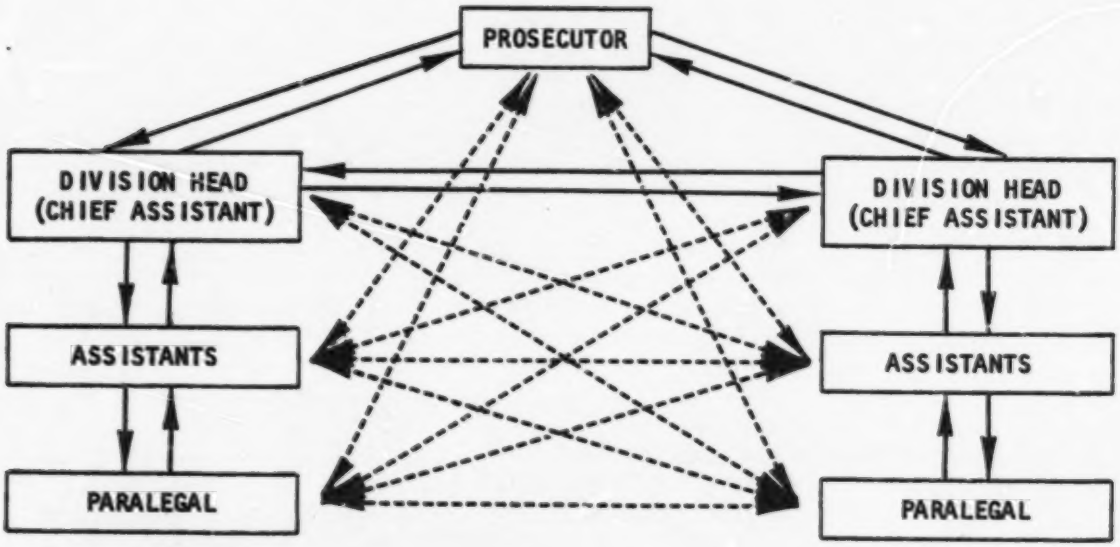

FIGURE 4

SOME TYPES OF COMMUNICATIONS

	Articulated Settings and Media	Nonarticulated Settings and Media
WRITTEN	Policy documents Operating procedures, guidelines, instructions Administration procedures, guidelines, instructions Letters and memoranda Recurring reports Reports specified for exceptional situations	Letters and memoranda Unspecified exceptional reports
UNWRITTEN	Staff meetings/conferences Verbal reports in specified situations	Casual conferences: Rap sessions Watercooler/coffee cup meetings Hallway meetings and drop-ins Lunches After-work cocktail hour Social occasions Car pool conversations

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theory than reality. Large offices with big caseloads are more likely to generate a high volume of work that can and should be routinized. Complex problems, when they do exist, should be identified and isolated for special handling (e.g., economic crime cases). In such offices, a dual structure might be considered combining an open model for the attorneys and decisionmakers, with a more bureaucratic organization for those elements engaged in routine work. Whichever approach is adopted, it should be the result of a careful consideration of all the variables, starting with the prosecutor's policy.

As previously indicated, the organizational aspects of the prosecutor's office and the structure of other non-prosecutive agencies may have a limiting effect on the type of policy that can be implemented and the procedures available for use. This is most clearly illustrated by case docketing systems employed by the court. Two basic models may be distinguished, each affects the prosecutor's organizational response. The first is based on an assembly-line, master calendar assignment system; the second is based on an individual or courtroom docketing system.

Prosecutor's offices generally respond to these court systems with one of two corresponding organizational structures. The assembly-line, master calendar model organizes the prosecutor's office around the various steps in the justice system. Assistants are assigned to each processing point and supported by other staff as necessary. In contrast, the individual or courtroom docket model flourishes in court systems that use individual docketing procedures. Here, prosecutors assign either an assistant or a team of assistants to a judge or courtroom. Unlike the assembly-line process, the same assistant handles an individual case from point of assignment through its disposition.

Each of these two basic structures has been adjusted and modified in many jurisdictions. Having little discretion in selecting a basic organizational model, the prosecutor establishes modifications that adopt some advantages offered by the other (not utilized) model and applies them to the one in use. A common modification is to establish special programs or units to process certain types of cases. This includes units that prosecute specialized crimes (e.g., narcotics, rackets, homicide, robbery, etc.) or those that prosecute different types of criminals (career criminals, first offenders, major offenders, or predicate felons). Establishing these programs provides added flexibility to staff allocation vital to organizations with changing priorities or workload characteristics. Although the prosecutor's organizational structure is influenced by the court's docketing system, his allocation of resources and manpower within an office provides sensitive indicators of the policy preferences of the agency.

As offices increase in size and complexity, the issue of uniformity and consistency in the decisionmaking process becomes more important. Ideally, uniformity occurs when all the assistant prosecutors make the same dispositional decisions about a case. Consistency is reached when those decisions are consistent with those of the prosecutor or his designated policy leader. These ideal states are difficult to attain even in the smallest offices. In the real world of

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prosecution, uniformity needs to be defined so that agreement can be reached on a range of desired outcomes even though the strategy of how they are reached may vary by the characteristics of the case and personal preferences of the assistant.

Extending this definition to an organization level and applying it to office policy, one may state that consistency in implementing policies is achieved when the dispositional pattern of cases is consistent with the goals of the office, and the course of actions (strategies) selected by the prosecutor are such that they produce the desired dispositional results.

In summary, individual decisionmakers operate within an organizational environment that hopes to maximize communication and feedback among all decisionmakers. Even though the office is influenced by the court's case processing system, it has to be structured to accomplish the prosecutor's goals. Resources, both physical and personnel, need to be allocated in accordance with the goals of each of the processes. In addition, internal accountability and controls need establishment to ensure that the agency is performing according to plan and to identify reasons for breakdowns if they occur.

The purpose of this brief discussion was to spotlight those factors that need examination in undertaking a policy analysis of the prosecution function. They include:

1. The environment within which the agency operates;
2. The criminal justice system with which it interacts;
3. The structure and organization of the office;
4. The process steps and procedures used to bring cases to disposition;
5. The resource allocation patterns that distribute the staff by experience and skills;
6. The communication, feedback and management controls used; and
7. The goals of the office.

The test for whether an office is applying its efforts in a uniform and consistent manner relies on first identifying what it is attempting to do, then testing for whether the distributive properties of justice within this framework are being applied in an equal and fair fashion.

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III. THE APPLICATION OF POLICY IN THE OFFICE OF THE PROSECUTOR

Based on the conceptual approach described in Chapter II an analysis was made of ten large prosecutor's offices located throughout the United States. The results of these studies were used to design a survey instrument so that the information base which the ten site study yielded could be expanded. Eighty responses to the survey are used here to supplement the findings of the ten site study. These results have been integrated with the more descriptive detail obtained from the sites.

The on-site study was conducted for a number of reasons. First, to determine the existence and identity of the policies employed in each of the ten offices. Both inductive and deductive approaches were combined to perform this task. Specifically, interviews were conducted with the top policymakers in the office to determine the articulated policy, then interviews were held with other decisionmakers in the organization to identify not only the operating policy but how it was being transmitted and implemented by management and organizational procedures.

Second, the study was to verify, if possible, the charging policy typology model that had been conceptually developed and to determine whether other prosecutorial policies existed that did not fit into the present model. This was accomplished by matching a jurisdiction's actual operations, programs and management procedures to the characteristics of the typology and noting its congruence to one of the postulated policies. If none of the criteria was violated, the office was labelled by the policy name. Where congruence with the criteria was not complete, the areas were identified, reasons isolated and adjustments sometimes made to the typology model as needed.

Third, the study was to identify other factors and/or process steps that are policy-sensitive and should be included in future policy studies of prosecution. This was achieved through staff interviews, supplemented by interviews with others in the criminal justice system such as public defenders, judges, sheriffs and community corrections personnel.

The results of the study are presented by examining the individual process steps in adjudication. This approach is consistent with the task of analyzing policy and it demonstrates how the prosecution function changes from one process step to another, how the policy of the office tempers the work performed in each of these steps and how the total process is affected by its parts. Because each process step generally is influenced by factors beyond the prosecutor's control, how they are adapted to in light of the priorities of the office shed valuable insight into the dynamics of prosecution.

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Overview

The ten prosecutors' offices participating in the study may be characterized by the different ways they have approached their prosecutorial responsibilities and by the organizational structure they have established to do the work.

The results give a distinctive stamp to the personality of an office ranging from a young, eager, dynamic office to one that is solid, experienced and bureaucratized. While these more intangible qualities are important in distinguishing one office from another, they are difficult to explicate through the more formal descriptive mechanisms such as office size, composition, procedures, and channels of communication. Thus, the survey data suffer from this lack.

To set the stage for examining the individual case processing points, a brief description of the types of criminal justice environments within which the prosecutor operates and the types of prosecutors' offices as reported by the survey will be presented. The reader should remember that this information applies to large, urban or suburban offices and jurisdictions nationwide and may not be suggestive of smaller offices and jurisdictions.

Criminal Justice Environment

It is widely agreed that prosecutor's offices do not exist in a vacuum. Their organization and policy is strongly affected by the criminal justice environment within which they operate. Yet, within this diversity, some statements can be made about the prevalence and types of court systems and legal environments within which prosecutors define their policy and operations. The survey documents this well.

The work of the office generally is in response to arrests made by more than one police agency varying in quality and sufficiency of information. The median number of police agencies in a prosecutor's jurisdiction is 16, and the range is from 1 to 72. In 86 percent of the urban jurisdictions surveyed, the police have access to a centralized booking facility which facilitates prosecutorial case review and the presence of criminal histories at intake. Cases are more likely to be processed in bifurcated court systems (58% of the time). The median number of criminal trial courts (felony and misdemeanor) per jurisdiction is 11; they range from 1 to 78.

The courts are almost evenly divided between the type of docketing system they use (52% have an individual calendar; 43% use a master calendar). The effect of this on the prosecutors' organization, as was noted, is to influence the adoption of a trial team organizational model or a process model. With respect to the continuance policy of the court, 15 percent of the jurisdictions surveyed reported that it was strict, 48 percent found it to be available if needed, and 37 percent said it was liberal. Most of the felony courts (64%) have a backlog but 58 percent of these jurisdictions reported that this seldom caused problems. Similarly, 85 percent of the

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jurisdictions operate with speedy trial rules, but only 9 percent reported that it caused problems.

There is wide variation in the availability of different laws or procedures nationwide. In order of prevalence, the jurisdictions reported the availability of:

	PERCENT
Discovery	96
Habitual offender acts	92
Consecutive sentencing	90
Postconviction restitution	89
Expungement	87
Minimum sentencing legislation	86
Statutory sentencing enhancements	83
Indeterminate sentencing	71
Trials de novo	58
Jury sentencing	33

The extent of actual usage of some of these more discretionary laws or procedures is less than their availability. Seventy-one percent of the jurisdictions reported that they routinely used statutory sentencing enhancements although it was available to 83 percent of the jurisdictions. Similarly, only 61 percent routinely used habitual offender acts; 43 percent, postconviction restitution; and 24 percent, expungement.

Prosecutor's Office Environment

The organization of a prosecutor's office gives structure and form to the agency. Like other criminal justice environments, it is marked by diversity. Most urban prosecutors responding to the survey were serving at least their second term (based on a 4-year term) of office. The median number of years that the chief prosecutor has been in office is 5, and the range is from 1 to 29 years. The offices are, not surprisingly, large. The median number of assistant prosecutors is 30; office size ranged from 3 to 530 assistants. Most offices (95%) also have access to investigators. The median number employed by the office is 5, but the range is from 1 to 151.

The type of personnel systems for assistant prosecutors has been subject to intense discussion and some controversy about which is the "best." Part of this debate exists because many varities exist, each supported (or criticized) by some group. The preponderant system is for assistants to serve at the pleasure of the prosecutor (75%), 12 percent of the jurisdictions offer civil service protection; 9 percent use a merit system, and 4 percent have other types of systems. Even more controversial is the matter of union representation. As of 1980 18 percent of the jurisdictions responding, were unionized. The median starting annual salary for assistant prosecutors is $16,000 and it ranges from a low of $12,000 to a high of $23,000.

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About 3 out of 4 offices (77%) coordinate their work with branch offices. The work also varies by jurisdiction. Ninety-one percent of the prosecutors have jurisdiction over juvenile matters; 89 percent over misdemeanors; 86 percent prosecute moving violations; 81 percent, appeals; and 51 percent have jurisdiction over civil matters.

The Intake Process

Intake represents the first stage of prosecution and culminates with the most important manifestation of the prosecutor's discretionary power--the charging decision. Of all the areas of prosecutorial activity, the screening and charging functions generate the most interest because they represent the focal point at which prosecutorial policy is implemented. The quality of the decisions made here often set the course for justice in a community.

Intake begins when the prosecutor is notified that a crime has occurred (and, generally, that a subject has been arrested) and ends with the decision to charge or not. Cases presented for prosecution generally originate from one of four sources: the police, citizen complaints, grand jury investigations and investigations initiated by the prosecutor. However, the largest proportion of prosecutorial work is generated by police activity.

Recent criminal justice experts have stressed increased prosecutorial activity in the review and screening of cases; the National Center for Prosecution Management (1972) and the National District Attorneys Association (1978) have attempted to implement standards developed by the crime commissions of the 1960's and 1970's through the development and dissemination of forms and procedures manuals. The extent to which they recognize the importance of the intake phase is reflected by the fact that two thirds of those surveyed stated they had a procedures manual setting out charging guidelines.

Optimally, an efficient and effective intake process is one where all relevant information reaches the prosecutor as quickly as possible after an arrest or criminal event so that the facts of the case can be properly reviewed and analyzed prior to a charging decision. Realistically, within the interactive environment of competing system demands, the prosecutor responds to whatever information is available whenever it is received.

The intake process reflects the gate-keeping function of the prosecutor. What is accepted and rejected at this stage sets the character of the remainder of the prosecution process. Thus it is important that the structure and organization of this process be defined before evaluations of the quality of the process can be made. The primary focus is on the decision to charge, who makes it and when.

Three prosecutorial organizational styles have been established that classify differences existing in this part of the decisionmaking process. They are:

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- o A transfer style that shifts many prosecutive decision functions to the law enforcement and/or judicial components of the system.

- o A unit style wherein the individual assistant is given autonomy in decisionmaking.

- o An office style in which the chief prosecutor selects a course of action for the decisionmakers and structures the office and its procedures accordingly.

Transfer (15% of the jurisdictions surveyed)

Recognizing differences in organizational style is important because they affect the types of charging decisions made. For example, if the prosecutor does not review cases before they are filed in the court, the effect is to transfer what would have been a prosecutor's charging decision to either the law enforcement agencies (police file charges) or the court (the court determines the charge and/or its level). The existence of a prosecutorial charging policy is precluded.

Two examples of this type of procedure were observed in Norfolk, Virginia, and Dade County, Florida. In both jurisdictions, initial charges are filed by the police. The arresting officer and/or detective, the victim and other witnesses are available for questioning prior to the preliminary hearing in Dade or the grand jury in Norfolk. Police charges can be, and quite often are, amended by the prosecutor at these accusatory procedures.

The resultant effect of having the review and screening function performed by other agencies is to delay prosecutorial intake until a later point in the process, usually at the accusatory step, and to place the office in a reactive rather than proactive charging stance.

Unit (36% of the jurisdictions surveyed)

Two offices (Salt Lake County, Utah and Lake County, Indiana) illustrate this organizational style of operation. Neither have separately organized intake units. Cases are reviewed by assistant prosecutors on an "as available" basis. Review of charging decisions is either minimal or non-existent. This organizational style appears to exist under one of two conditions. The first is where office supervision is decentralized (or fragmented) so that each assistant is delegated the authority to operate as an autonomous unit.

The second condition that may produce this organizational style is the prosecutor's adoption of a "trial team" approach. When authority for the case is delegated to an assistant at intake and does not end until the sentence recommendation is made, autonomy may result if management controls are not in place. This type of operation also precludes the need for setting up an organized intake unit. (Baton Rouge, Louisiana offers a good example of this type of intake).

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The prosecutor in Salt Lake is not faced with time constraints in making his charging decision. Each charging decision is based on an examination of the report prepared by either the police officer or the detective. In contrast, court-ordered, early filing requirements make charging a difficult decision in Lake County. A twenty-four hour deadline (48 if the arrest occurs after noon on Saturday) creates a crisis environment that is hardly conducive to proper screening and charging. There is rarely routine review of an assistant's charging decisions, but, to reduce the abuses likely to occur from assistant shopping, cases are assigned to assistants from a master log maintained by a clerk. A constant concern of this style is that assistants, in assuming the case review and intake responsibility, may make charging decisions according to their own standards.

In Baton Rouge where the unit operates as a trial team, each one of the five trial sections assumes responsibility for cases according to the date the defendant was arrested and carries them to disposition. Overall policy control is maintained by the District Attorney and his first assistant and supported by the close physical proximity of all 5 teams (they are all located on the same floor).

Office (49% of the jurisdictions surveyed)

The largest proportion of prosecutors surveyed and visited (Wayne County, San Diego, Orleans Parish, Kings County and Boulder County) established separate organizational units to review cases at intake and make charging decisions.

In Wayne County, the intake unit is staffed by experienced prosecutors. The assistant in charge screens and reviews charging decisions and monitors the intake process to preclude assistant shopping. Generally, cases are brought over by courier, although the complaining witness must be present to sign the complaint prior to the issuance of a warrant. In Michigan, by law, no warrants can be issued without prosecutorial approval. Thus, a favorable environment has been established to permit case screening.

The District Attorney in Kings County (Brooklyn), New York, established a screening unit in the late winter-early spring of 1978 and strengthened the power of its Early Case Assessment Bureau (ECAB). Experienced assistants direct a staff of case screeners located at the 84th Precinct in Brooklyn, the jurisdiction's central booking facility. Access to the arresting police officer and usually the complaining witness is facilitated and a priority evaluation system for subsequent processing is also performed here.

In San Diego, the intake unit is also staffed by experienced prosecutors. The arresting police officer is required to present his report before a charging decision is made. Supplemental investigations are generally a police responsibility; however, the District Attorney's own investigative staff is sometimes used for this purpose.

In Orleans Parish (New Orleans), the intake process is given

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careful and continuous attention by an organizationally separate unit. Three assistants are individually assigned to review narcotics cases, armed robbery, and homicide cases, respectively. Two assistants review economic crimes cases, and four review general crimes. Only rejections require the approval of the chief of intake; but any subsequent dismissals at trial must be approved by either the charging assistant or the chief of intake. Discovery is extensive at intake since the prosecutor has up to 15 days to file charges. The declination rate is among the highest in the country (about 45%).

The prosecutor in King County (Seattle) maintains a separate intake unit staffed by experienced prosecutors. Charging decisions are based on interviews with the detective assigned to the case and the investigative report. Although there is a review mechanism for charging decisions, assistant shopping is possible.

In Boulder, police reports are first reviewed and supplemented by the prosecutor's investigative staff then forwarded to the charging assistant with recommendations. However, the District Attorney himself makes the charging decision. He conducts a daily staffing and charging conference which may also be attended by other assistants, defense counsel, the sheriff, community corrections personnel and other interested parties.

Figure 5 summarizes and compares differences between selected intake characteristics in jurisdictions with office or unit organizational styles of prosecution. Based on the survey responses it shows that there are differences due to organizational structure. The office organizational style is more organized, works with routinized paperwork reporting procedures (see "what reports delivered routinely" differences) and tends to have more specialization in its tasks (see "assistants routinely aware" section). The unit organizational style on the other hand relies more on obtaining information verbally (see "who prosecutors talk to routinely"), requires more controls on discretionary decisions since the organizational supports are weaker (see "approval routinely needed for assistants to") and has less specialization in its prosecution activities.

The most distinctively different organizational style was the transfer one, created when the prosecutor did not review cases before they were filed in court. Figure 6 displays the intake characteristics for the surveyed jurisdictions having this style. The figures support the thesis that the prosecutor exercises less control over intake if he does not review charges before they are filed.

About one half of the time police reports must be requested. Relative to the other organizational styles, little communication is routinely had with the parties to the case prior to the court appearance, more discretionary approvals are needed for dispositional decisions and little awareness of final dispositions is indicated. In brief, the indications point to a system exercising little prosecutorial power or control over its caseload.

Regardless of organizational style, the intake process is

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FIGURE 5

SELECTED INTAKE CHARACTERISTICS FOR UNIT AND OFFICE STYLES OF PROSECUTION
(In Percentages)

	Unit	Office
INDIVIDUAL WHO BRINGS REPORTS TO OFFICE MOST OFTEN:		
Arresting officer	23	23
Detective	52	49
Courier	27	31
Other	12	15
WHAT REPORTS DELIVERED ROUTINELY:		
Incident	83	92
Arrest	86	100
Detective	69	82
Criminal history	57	74
Witness statement	79	74
WHO PROSECUTORS TALK TO ROUTINELY:		
Arresting officer	41	32
Detective	59	64
Victim	34	33
Other witnesses	14	11
Defendant	38	21
Defense counsel	0	3
Investigator	21	9
PERCENT DECLINED AT INTAKE:		
Median	15	15
Range	2-80	2-60
APPROVAL ROUTINELY NEEDED FOR ASSISTANTS TO:		
Decline to prosecute	28	27
Change police charge	21	5
Refer to other court	19	11
Refer to other agency	28	16
Defer prosecution	50	18
ASSISTANTS ROUTINELY AWARE:		
Disposition	82	35
Sentencing	72	22

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FIGURE 6

SELECTED INTAKE CHARACTERISTICS FOR TRANSFER STYLE OF PROSECUTION

	Percent
Need to Request Police Reports:	
Routine	50
Seldom	50
Identifiable Review Unit:	
Yes	71
No	29
Percent of Cases Dismissed or Nolled at the Next Court Hearing:	
Median	10
Range	1-50
Percent of Cases Referred to Lower Court:	
Median	10
Range	1-60
Reports Routinely Available at the Next Court Hearing:	
Arrest report	100
Court complaint	92
Incident report	83
Criminal history	79
Witness statement	71
People Routinely Spoken to Before the Next Court Hearing:	
Arresting officer	42
Detective	31
Complaining witness	29
Victim	21
Defense counsel	14
Defendant	0
Decisions Requiring Written Justification:	
Dismiss or nolle	67
Defer prosecution	60
Refer to another agency	50
Refer to another court	42
Change police charge	38
Assistants Aware of Disposition:	
Routine	36
Seldom	64
Assistants Aware of Sentence:	
Routine	27
Seldom	73

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commonly measured by its declination rate. The dynamics of this decision is controversial and ambiguous. The survey data were analyzed to see if any relationships emerged as significant. One did .

If police reports were prepared and/or transmitted to the prosecutor by detectives (not arresting police officers or couriers), the effect was to increase the declination rate of the prosecutor. The finding is reasonable when one assumes that detective reports are better prepared, more complete and have information such as witness statements, not generally included in arresting police officers' reports. Nor are the details of the incident generally known by a courier. The result is that with adequate information it is easier to make a rejection decision. Conversely, with less than adequate information it is easier to accept the case pending the obtaining of more information at a later point.

Based on the on-site visits and the survey responses what emerges from examining the intake process and its many forms is that it is dominated by three issues:

1. Whether prosecutor is able to review arrests and set charges before they are filed in court.

2. Whether the degree of information provided is adequate for a decision to decline a case for prosecution

3. Whether there is sufficient time available to produce additional information to enhance the quality of the decision.

This latter issue highlights one of the few areas in the adjudicative process that benefits from increasing process time, not reducing it. This is simply because the impact of intake is so powerful that it sets the course (in some cases, irrevocably) for the entire prosecutorial process.

The Accusatory Process

The accusatory process not only affects the future status of an individual defendant, but also acts as a review and dispositional outlet for cases. It can be defined as beginning after the decision to charge has been made and ending with the arraignment of the defendant on an accusatory instrument.

There are two major forms of criminal accusation in the United States: (1) the grand jury indictment, and (2) the prosecutor's bill of information, which generally, although not always, results from a finding of probable cause at a preliminary hearing. At present, all states have some type of grand jury system, although the extent of use in the accusatory process varies. (Only 14 percent of surveyed jurisdictions reported using it as their primary accusatory tool.) Grand jurors conduct their proceedings in secret and are charged with evaluating the state's evidence for probable cause that a crime has been committed and that the defendant was the perpetrator. Because the

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prosecutor most often controls the flow of information and witnesses to the grand jury, critics claim that the jurors act more as a "rubber stamp" for the prosecution than the determiners of probable cause. The grand jury may hand up an indictment or a true bill as the accusatory instrument. Should the prosecutor fail to meet the probable cause standard, the grand jurors may return a "no true bill." A third option commonly used is to "remand" the case for prosecution at a lower misdemeanor (or equivalent) level.

The second form of accusation is a bill of information which generally results from a probable cause or preliminary hearing (39 percent of the surveyed jurisdictions reported using this process primarily). Two issues are generally incorporated in a preliminary hearing: (1) the question of whether or not there is probable cause to bind the case over for trial (91% of the jurisdictions used this); and (2) whether there is probable cause to restrict the liberty of the defendant (35% of the jurisdictions used this criterion). While the first determination is constitutionally protected by Gerstein v. Pugh, 420 U.S.103(1975), the second is not. In many jurisdictions the two issues have been separated, with the restraint of liberty being resolved in a first appearance for bond setting and indigent defense counsel appointment; and bindover to trial being held at a later date by a preliminary hearing. In some states, the preliminary hearing process is mandated by the state constitution; in others it is created by statute, or rule of court.

Four basic models for preliminary hearings have been postulated--the Federal, the California, the American Law Institute and the Rhode Island. Each is distinguished by the requirements it sets in the following areas:

- o number of appearances;
- o time limits imposed, if any;
- o degree of participation by the defense and prosecution;
- o necessity for questioning and cross-examining witnesses; and
- o amount and type of evidence required.

The first three types require a determination that there is probable cause to believe that the defendant committed the crime. The Rhode Island (ex parte) model is concerned with only the restraint of liberty issue.

The two basic forms of accusation have produced four accusatory procedures: (1) cases may flow from arrest to grand jury for indictment (14% of the surveyed jurisdictions); (2) arrest to preliminary hearing for bindover to the grand jury for indictment (19%); (3) arrest to preliminary hearing for bindover for trial (39%); and (4) arrest to the direct filing of an information (34% of the surveyed jurisdictions).

Figure 7 shows the prevalence of usage of these accusatory

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processes. Since jurisdictions may employ more than one type of procedure the figure shows not only the one most often used but the second prevalent one. If only one was used exclusively this is shown by the figure in the cell having both most often and often identical. For example, only 4% of the jurisdictions with a review function use Grand Jury exclusively. For these offices, the more prevalent usage is the sole use of preliminary hearings (42%). Five percent of the offices used the preliminary hearing most often and the grand jury often. The need for a grand jury hearing can be obviated if the prosecutor files a bill of information.

Variations in accusatory procedures may also arise in an effort to correct court procedures or rules that impede prosecution, or to gain more control over the decisionmaking process. In San Diego for example, the office was handicapped by recent California Supreme Court rulings that made untenable the prosecutor's use of the grand jury as an accusatory body. Thus, with the exception of capital crimes, the grand jury was by-passed by a filing of a bill of information with the court. In Dade County, another variation was observed. When more control over the accusatory decision process was needed, the mini-trial preliminary hearing was bypassed by the state's filing a direct bill of information. Although the two basic accusatory forms generate at least four routine prosecutorial responses and adaptations, the fact that more than one route can be used gives needed flexibility to the system. The response to intake as it adapts and modifies the charging process (or lack of it) is interesting. Grouping of the survey respondents accusatory and intake procedures (Figure 8) shows the system's response to these areas. Prosecutors who file a direct bill of information dispose of the smallest proportion of cases before trial (21%). The lack of a dispositional outlet in the accusatory process is obvious. (The 1% recorded was due to grand jury availability as a secondary route). The combination of review at intake and either at grand jury or preliminary hearing accusatory route produced the highest proportion of pre-trial dispositions (44% and 46%).

To be sure, the reliability of these figures can be questioned especially since the sample size is small and much variability surrounds the averages. For example, rejection rates at intake range from a low of zero to a high of 80 percent. But the presentation here is for another purpose, it is to set forth the thesis that adjustments to the accusatory process can be made so that ability to dispose of cases will produce profound effects on pre-trial disposition rates and ultimately affect the workload of the trial process step.

Trials to Disposition Process

Once a case has been accepted and the accusatory phase completed, the focus of work shifts from evaluating cases for acceptance or sufficiency to preparing for dispositions. The

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FIGURE 7

PERCENT DISTRIBUTION OF JURSIDICTIONS BY TYPE OF ACCUSATORY PROCESS USED MOST OFTEN AND OFTEN, BY INTAKE REVIEW STATUS

Most Often	Often			
	GJ	PH	PH/GJ	INFO
FELONIES ARE REVIEWED AT INTAKE				
GJ	4	2	2	-
PH	5	42	-	-
PH/GJ.....	-	2	3	-
INFO	5	3	-	26
FELONIES ARE NOT REVIEWED AT INTAKE				
GJ	17	-	-	-
PH	-	-	-	-
PH/GJ.....	25	17	33	-
INFO	-	-	-	-

NOTES:
- GJ = Arrest to grand jury.
- PH = Arrest to preliminary hearing to filing an information.
- PH/GJ = Arrest to preliminary hearing to bindover for grand jury.
- INFO = Arrest to direct filing of information.

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FIGURE 8

PERCENT DISTRIBUTION OF CASES DISPOSED PRETRIAL
BY TYPE OF ACCUSATORY PROCEDURE MOST OFTEN USED

Accusatory Procedure	Total	Intake	First Appearance	Preliminary Hearing	Grand Jury
Grand Jury No Review	36	0	22	6	8
Grand Jury or Preliminary Hearing with review	44	10	3	13	18
Preliminary Hearing	46	20	0	26	0
Info	22	21	0	0	1

NOTES:
GJ = Arrest go grand jury.
PH = Arrest to preliminary hearing to filing an information.
PH/GJ = Arrest to preliminary hearing to bindover for grand jury.
INFO = Arrest to direct filing of information.

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trials to disposition process begins after the defendant has been arraigned and ends with a disposition. A number of activities are involved in this stage. Most important for the prosecution are:

- o case assignment procedures;
- o trial preparation and strategies;
- o court appearances.

It is in this process step that the largest proportion of dispositions occur. On the average, 9 percent of the cases were disposed by trial; 10 percent were dismissed; and 75 percent were disposed by plea. The trial process thus is dominated by plea dispositions.

The power and operations of the prosecutor in this process step are most limited, constrained by the capacity of the court and affected by its docketing and continuance procedures. How the prosecutor structures his trial division and makes assignments depends in large part on whether the court uses a master calendar assignment procedure or individual docketing. The survey shows that 52 percent of the jurisdictions use an individual docketing system and that 43 percent use the master calendar system. A process-oriented organizational mode, congenial to master calendar assignment procedures, allows cases to flow through each of the process steps, such as arraignments, pretrial conferences, motions and other hearings, and finally trials. Much like an assembly-line, assistants are assigned to the various process points and process the cases as they pass through. Case assignment for trial preparation and disposition, therefore, occurs very late, and the trial assistant prepares cases that have been shared and formed by others before him.

The individual docket system supports the adoption of an integrated or trial team approach. Here one assistant (or a team of assistants) is assigned to an individual judge or courtroom. That team prepares and tries cases from their assignment to the court trough to their disposition. All the separate activities that are divided among the assistants in the master calendar process model are integrated in this type of assignment model.

Case assignments procedures vary. In Kings County (Brooklyn) and Wayne County (Detroit), trial assistants are assigned to the divisions of their respective courts. They prepare the cases that are docketed to the division for trial. In King County (Seattle) the chief trial assistant evaluates each case and matches its complexity with the skills and caseload of the trial assistants before making individual assignments. In San Diego, the assistant in charge of the Superior Court Division makes trial assignments to teams on the basis of their current caseload and the type of expertise it is felt may be needed in a case. The Chief of the District Court Division in Boulder assigns cases to one of four assistant district attorneys. A similar assignment procedure is used in Lake County by the Chief Assistant in charge of trials. In each of these sites, most of the pretrial processing was conducted by

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assistants other than the trial assistant.

Four of the offices visited--Dade (Miami), Orleans (New Orleans), Norfolk and Salt Lake--used a trial team approach. In Salt Lake, trial assistants received their cases at intake and were responsible for them from charging through disposition. In Dade, Orleans and Norfolk, a similar procedure existed but assignment did not start until the preliminary hearing was to be conducted or a bindover completed. Nationwide, almost half (48%) of the jurisdictions surveyed assign cases to assistants before arraignment, and 19 percent assign cases to the assistants after motions or pretrial conferences are held.

Over the years many jurisdictions have developed modifications to the basic assignment procedures that allow for the simultaneous utilization of both trial assignment forms. The most common adaptation was to create special bureaus or divisions to process special crimes or cases of offenders. The value of these special programs or units is that it gives the prosecutor a choice in using the most advantageous assignment procedure

Since the work undertaken in preparing for trial is done within a framework of expected dispositions, the selection and use of appropriate strategies to achieve these dispositions is based on their availability to the office and the discretion allowed the trial assistants. Two of the most notable strategies, and the ones examined here, are discovery and plea bargaining.

Depending on the extent to which discovery is mandated by court rule or state statute, it may be utilized as a prosecutorial strategy to induce early pleas or negotiated dispositions. In some instances, it may also create additional work for the prosecutor.

Among the ten sites, only Salt Lake had no statutory or court rule compelling discovery; there the use of discovery is at the discretion of the trial assistant. The informal use of open files appears to be the general trend. The survey showed that almost three-fourths (71%) of the jurisdictions routinely allowed trial assistants to use an open file policy with defense counsel. Liberal to plenary discovery is available to defense counsel in San Diego, Wayne, King, Boulder, Lake and Dade counties.

In Dade County (Miami), the Florida discovery rule is so liberal that it compels the prosecutor during case preparation to devote an inordinate amount of time to the public defenders demands. It is the practice of the public defenders' office to depose all the state's witnesses in a given case. The prosecutor is required to be present during such questioning in order to protect the interest of the state. This requires significant expenditures of prosecutor manhours and public tax funds since the depositions are costly. Consequently, this practice is confined to public defender cases and sparingly used when defense counsel is privately retained.

Prosecutors in Lake County have their case files photocopied and provided to defense counsel as a result of the liberal Indiana discovery

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rule. In Boulder, the District Attorney's open file discovery goes beyond that required by Colorado law. It is a policy based on his belief that full disclosure lays a solid ground for gathering all information about a case so that a fair and just disposition can be reached as soon as possible.

A defendant has a right to limited discovery in Norfolk. Prosecutors there often open their case files to defense counsel in strong cases as a strategy designed to induce an early plea. The same strategy is used by Salt Lake prosecutors in strong cases.

By far the most important strategy used by the prosecutor to manage case loads in eight of the sites is plea negotiation. Disposition of caseload by guilty pleas is the major form of dispositions. Nationwide, the average proportion of caseload disposed by plea is 75 percent. Seventy-three percent of the jurisdictions surveyed routinely allow their trial assistants discretion to negotiate pleas (but not all of these are allowed to make plea offers). However, plea negotiation is a matter of jurisdictional policy. In New Orleans and Boulder, plea negotiation is restricted. The District Attorney's staff in New Orleans declines to file charges in 45-50 percent of the cases presented. Cases accepted are expected to go to trial without a change to the original charge. As a result, less tan 10 percent of all cases are disposed of by plea bargaining. Early in 1978, the District Attorney in Boulder instituted plea bargaining reform. Prior to that time, it had been the policy of the office to overcharge by filing multiple counts which were later negotiated. Under the "reform" policy, the District Attorney and his staff at a staffing and charging conference make a charging decision that is expected to hold under ordinary circumstances.

The other eight sites are distinguishable by the amount of discretion vested in the trial assistant to negotiate pleas and the extent to which that decision is customarily reviewed. Nationwide, 51 percent of the jurisdictions reported that the trial assistants routinely made plea offers without obtaining prior approval. In Norfolk, Dade and Salt Lake, plea negotiations are largely within the discretion of the trial assistant. His decision is rarely subject to review.

In contrast, the Lake, King (Seattle) and Wayne County prosecutors have vested the authority to negotiate pleas in a limited number of senior assistants, the Chief Trial Deputy in Lake County, an Assistant Chief Prosecutor in King, and the Docket Coordinators in Wayne. Two pretrial conference parts in Kings (Brooklyn) Supreme Court have been established for the sole purpose of expediting the negotiation of pleas. The plea offered at the conference (determined by the trial assistant in consultation with his supervisor) in generally the one that will be offered up to the day of trial at which time all offers are cancelled.

In San Diego, approximately 90 percent of all felony cases bound over for trial are disposed of by guilty pleas; but their disposition is not negotiated through charge reductions. A panel of District Attorney staff supervisors meet weekly at a case evaluation conference (known colloquially as "the turkey shoot"). Here, a determination is made as

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to the type of plea which will be offered in a given case and whether the office will oppose the defendant's serving time in the local jail in contrast to the state penitentiary. The extent to which these strategies were used varied by the policy of the office, the amount of discretion vested in the trial assistants, and their availability for use within the local criminal justice environment.

Finally, the last factor considered that bears on the nature and character of the trials process is the continuance policy of the court and actions taken to counteract delay by means of speedy trial rules. The continuance policy of the court is probably the single most important factor affecting the successful disposition of cases. Excessive continuances not only increase the work of the prosecutor, but seriously diminish his capacity to bring cases to a satisfactory disposition.

Of the ten jurisdictions visited, continuances and delay appeared to be a problem in only two--Kings (Brooklyn) and Dade (Miami). Although there is, as one would suspect, a degree of idiosyncratic variation among the 12 Circuit Court Judges who hear criminal cases in Dade, continuances in large measure are the order of the day there. Speedy trial problems are obviated by requiring that a defendant waive his right to one as a condition of granting a continuance.

In Kings County, cases do not generally go to trial until more than five months after indictment because of the policy of the court to be liberal in granting continuances, there called adjournments. As one assistant district attorney put it, "Most judges are very lenient in granting defendants' motions for adjournment. Speedy trial rules are no problem because waivers are obtained from defense counsel." This problem is minimized in both Norfolk and King County (Seattle), where the prosecution must acquiesce to a defendant's motion for a continuance.

Whether speedy trial rules reduced or controlled delay by acting as a lid on time in process is indeterminate from this study. Speedy trial rules are in effect in all of the sites visited and 85 percent of the jurisdictions surveyed. However, 91% of the offices reported that they seldom posed problems. They required that defendants be brought to trial within time periods varying from six months (for those not incarcerated awaiting trial) to a much shorter period of time for those in jail awaiting trial. Yet, in all but two jurisdictions visited, the time from arrest or bindover to final disposition is far less than that imposed by the speedy trial requirement. In King County (Seattle), it is within a period of 30-60 days; within 45 days for incarcerated defendants in Salt Lake (and 9 weeks for those not in jail); Wayne County's (Detroit) office policy requires trial within 90 days after bindover. At the time of the site visit in August, 1978, the average time was approximately 45 days. Norfolk, at the time of the site visit in April, 1978, moved felony cases from indictment to final disposition in 59 days. In Orleans Parish, cases are disposed of usually 59-60 days from arrest. The survey showed that the median time from arrest to disposition was 90 days for jail cases and 120 days for bail cases.

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From the assignment of a case through to its ultimate disposition at the trial level--whether that be by negotiated plea of guilty, verdict of guilty after bench or jury trial or acquittal by the same process--a trial assistant is confronted almost daily with a variety of situations which require decisions. The discretion permitted him varies by the level of his experience, the importance of the case and the policy of the office.

This discretion is most strictly circumscribed in Orleans Parish and Kings County at the trial level. It is also the case in King County (Seattle) as a result of the constraint imposed by the prosecutor's charging standards. The "no reduced plea" policy in effect in Wayne County limits trial assistants' discretion. In Boulder the staffing and charging decision made at intake by the District Attorney himself cannot be deviated from except for exceptional circumstances in connection with plea bargaining.

Provision has been made in Dade County for monitoring trial assistants' decisions in some regards. For example, trial assistants must submit in writing, for approval by supervisors, dismissals and nolle prosequis. The centralized coordination and control of plea negotiations in Lake County, obviates the need for other formal review mechanisms. The prosecutor relies on his good relationship with the court to get feedback as to decisions by his trial assistants.

Trial assistants in Salt Lake County and Norfolk are vested with a great deal of discretion in every regard--from intake through ultimate disposition. There are few controls on their decisionmaking activities and no systematic reviews.

These variations are substantiated by the survey. In 61 percent of the jurisdictions, trial assistants routinely need prior approval to dismiss or nolle a case; 49 percent require prior approval if a trial assistant wishes either to make a plea offer or to divert or refer a case out of the system; 44 percent require prior approval to defer prosecution; and in 18 percent of the jurisdictions, prior approval is required for open-file practices with defense counsel. Figure 9 displays some selected characteristics for the trials process.

In summary, policy transference in the trials to disposition process is dependent on the prosecutor's attitude toward plea bargaining, open file communication and the controls placed on the trial assistants' decisionmaking activities. The variety of procedures that exist among the sites gives strong indication to the fact that there in more than one acceptable way of bringing cases to final disposition dependent on the structure and procedures of the court and the policy of the prosecutor. It also points to the usefulness of judging which approach is better until measures of efficiency, effectiveness and equity can be obtained.

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FIGURE 9

SELECTED CHARACTERISTICS OF THE TRIAL PROCESS

	Initial	Subsquently
1. Docket Controlled by:		
Police	1%	0%
Prosecutor	21%	16%
Courts	78%	84%
	Yes	**No**
2. Pretrial Conferences Routinely Scheduled	68%	32%
3. Motions Disposed Before Trial	90%	10%
4. No Reduced Plea or Cutoff Date	44%	56%
	Median	**Range**
5. Number and Type of Dispositions:		
Plea	1300	90 - 11952
Jury trial	134	3 - 987
Nonjury trial	22	0 - 2274
Dismissals/nolles	170	0 - 4954
Other	0	0 - 667
TOTAL	1700	100 - 17345
6. Percentage of All Trials to Total Dispositions	10%	2% - 40%
7. Percentage of All Pleas to Trial Dispositions	75%	29% - 97%
8. Ratio of Total Dispositions to Felony Judges	230.3	16.7 - 1560
		Percent
9. Evidentiary Strength of Cases Brought to Trial:		
Marginal		34
Strong		63
Very strong		3
10. Stage Where Most Pleas Occur:		
Before arraignment		1
At arraignment		9
After arraignment		73
During trial		16
11. Discretion Routinely Allowed Trial Assistants to:		
Negotiate pleas		73
Use open-file policy		71

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The Postconviction Process

Although traditionally most prosecutors have viewed their role in the criminal justice process as ending with the disposition of a case, in recent years, some prosecutors have started to take a longer view of their function, extending their presence and influence into the postconviction area. The postconviction process starts after the disposition of the case and ends only when the defendant is no longer under the supervision of the criminal justice system. The activities most commonly found in this process include sentence recommendation, presentence investigation, some diversion programs, appeals, expungement and opposition to parole and pardon applications.

The level and degree of participation by prosecutors in this process varies considerably due to prosecutorial preference, the differing exigencies of state law, and court structure. In many states there are statutory limits on the local prosecutor's ability to involve himself in a case once a conviction has been obtained. Often the Attorney General's office is the only agency empowered to handle appeals. In other states mandatory sentencing laws reduce the prosecutor's potential impact on a case following the rendering of a verdict.

Despite the restrictions, the postconviction area appears to be one of expansion for many prosecutors. Nationwide 75 percent of the jurisdictions surveyed reported some activity in this area. Yet patterns are difficult to find and trends almost impossible to predict because there has been virtually no long-term research in this emerging field. However, it does seem reasonable to conclude that major developments with respect to the prosecutor's role in postconviction activity will have a significant effect on both the power of the prosecutor and the nature of his discretion.

Of the ten sites visited, no two demonstrated exactly the same degree of involvement in postconviction activity nor did any of the offices exhibit identical organizational structures for this purpose.

Presentence Investigations--Many courts require presentence investigations (PSI) for convicted defendants before sentencing is imposed. The PSI generally relates the defendant's background, previous criminal record, community ties, employment history and sometimes the state of his physical and mental health. The PSI may also include the views of police, social workers, probation officers, psychologists or psychiatrists, as well as relatives and friends of the defendant.

This is not an area in which the prosecutor routinely participates. Of the jurisdictions surveyed, only 28 percent reported that they were active participants in this process.. In three jurisdictions--Boulder, Norfolk and King County--the prosecutor provided input into presentence investigations; however, only in King County did he play a major role in the process. There, the Prosecuting Attorney employed a presentence specialist who prepared a separate report for the court, directing its attention to the facts of the cases, prior record of the defendant, and other related cases.

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Sentence Recommendation--Making sentence recommendations is much more prevalent. According to the survey, the majority (60%) of the jurisdictions routinely participated in making sentencing recommendations about a case. Prosecutors in all the sites visited also had some type of involvement in sentence recommendation, even though the nature and extent of their activity varied widely. Sentence recommendations may be sorted into several categories. They range from recommendations as to: length of time to be served in a penal institution; the type and location of the corrections institution, e.g, "local time" or the state penitentiary; probation or deferred sentencing; or the defendant being placed in some type of special program.

Recommendations with respect to length of sentence were most common in the ten sites. They were made regularly in Kings, Dade, Boulder and King County, as well as occasionally in Norfolk. The Wayne County and San Diego prosecutors are both restricted by mandatory sentencing laws. However, in these jurisdictions and in Orleans Parish also, the use of enhancements at the charging level provided an effective alternative to prosecutorial participation in making sentence recommendations.

Diversion and Restitution Programs--Many prosecutor's offices are active in sponsoring or utilizing diversion programs for first-time offenders or those convicted of nonviolent crimes. Seventy-one percent of the surveyed jurisdictions report utilizing diversion programs on a routine basis. However, these programs are more likely to be available at other process stages in addition to postconviction. Three sites had some kind of diversion or restitution program operating at the postconviction level. In Boulder, diversion played a major dispositional role as the prosecutor worked closely with the community correctional agency. In King County (Seattle), a comprehensive victim restitution program was operational in the victim-witness unit of the office. In Orleans Parish, diversion was available for felony offenders who otherwise would be stigmatized by a non-expungable record.

Appeals--In many jurisdictions the appeals process is part of the local prosecutor's domain. Eighty-one percent of the sites surveyed reported having jurisdiction over appeals. In Norfolk, King County, Salt Lake, Boulder and Lake County, felony appeals are generally handled by the Attorney General. Wayne County and Orleans Parish appeals are handled in conjunction with the Attorney General. Kings County (Brooklyn), San Diego and Dade County (Miami) had large active appellate divisions. In Kings County, this role was expanded beyond its traditional one; the attorneys also functioned as in-house counsel for case-related matters, reviewers of briefs prepared for lower courts, and sometimes even legislative analysts, in addition to having a training function.

Parole, Pardon and Expungement--Prosecutorial involvement in opposing applications for parole or pardon and initiating expungement proceedings represent two opposite ends of a postconviction activity spectrum. One seeks incapacitation, the other rewards rehabilitation. Both reflect policy commitments of prosecutors. The District Attorney

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in Orleans Parish established a Postconviction Tracking Unit in 1974. This unit, upon notification of an application for parole or pardon, reviews cases and decides whether the District Attorney should oppose the application. If so, the assistant conveys the opposition of the District Attorney to the Parole and Pardon Board, stating the reasons for this stance.

The limited number of jurisdictions that are involved in this postconviction activity (36% oppose paroles; 26% oppose pardons) reflects in part, the novelty of this area for prosecutorial involvement.

In contrast, the District Attorney's office in Boulder, Colorado, actively aids defendants in initiating expungement motions. In 1976, they processed 200 of these matters on the basis of the prosecutor's interpretation of case law. In 1978, this activity had been codified by state legislation easing the procedures for the expungement process. Many (87%) of the jurisdictions surveyed indicated that expungement is available for their office. However, few (24%) utilized it routinely.

Special Programs

Every prosecutor's office operates with an established set of procedures that are routinely applied to incoming cases from the point of intake, through the accusatory, trial and final disposition stages. Generally these same procedures will be followed regardless of the type of case involved. However, some prosecutors have recognized the existence of particular categories of offenders and offenses that merit special prosecutorial attention outside the regular channels of office activity. Accordingly, these prosecutors have developed special programs that seek to identify certain cases as deserving of special handling. Figure 10 exhibits the extent of prosecutorial participation in various special programs as reported by the survey. It is notable that these programs reflect both the funding emphasis of the federal government and are in line with the more critical concerns of either prosecution or the public.

Two basic types of programs designed to bypass normal caseflow are common. One is offense-oriented, generated by the prevalence of an offense or its complexity for prosecution. It results in development of programs such as economic crimes, white collar or consumer fraud projects involving offenses that are generally nonviolent but complicated in proof patterns.

A major offense based program focuses on a broad category of economic crimes, including white collar crimes, consumer protection, fraud, or rackets. Like most special programs, economic crime programs are often federally funded and represent a response to public outrage. They require an investment of substantial manpower and technical resources in addition to time. Many jurisdictions simply are not staffed at a sufficient level to satisfy these requirements.

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FIGURE 10

PERCENT OF JURISDICTIONS PARTICIPATING IN SPECIAL PROGRAMS

Special Program	Percent
Victim witness	82
Career	80
Child support	80
White collar	76
Diversion	71
Rape or sex abuse	67
Citizen complaints	64
Drug, alcohol or other	63
Consumer fraud	63
Arson	50
Organized crime	49
Street crimes	41
Elderly	24

The other set of programs is offender-based generated by either the goals of rehabilitation or incapacitation. Diversion is a notable example of this first type condition. Focusing on first offenders or individuals who have committed minor crimes, diversion takes many forms; however, all such programs require an agreement between the prosecutor and the defendant that stipulates some form of rehabilitative activity in lieu of formal prosecution. At the other extreme, are those offender-based programs that target criminals because of the seriousness of their criminal records. The most familiar program is directed toward the habitual offender or career criminal individuals with substantial prior records whom the prosecutor views as a threat to society.

Some type of economic crime program was observed in Norfolk, Dade, Kings, Orleans, King, San Diego and Wayne. However, several of these programs were small-scale and did not involve significant modifications of ordinary office procedures. In Norfolk, for example, only one assistant was assigned to economic crimes, even though the Commonwealth Attorney gave priority attention to this area. He personally involved himself in the development of large and complicated economic crime cases and their prosecution.

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The prosecutors in both King (Seattle) and San Diego County gave high priority to economic crimes. This was substantiated by the fact that assignment to the fraud unit was prestigious and the staff operated with considerable autonomy from the other office procedures.

Kings County (Brooklyn) divides its economic crime cases into two categories, rackets and consumer fraud. The former is handled by a prestigious bureau, employing experienced trial assistants and prosecuting very complex cases. Rackets cases generally result in more trials than do most of the other cases that come through Brooklyn's Supreme Court. In contrast, few trials result from the Consumer Fraud Bureau's activities. Most of the cases originate from walk-in complaints and, through mediation, are disposed of outside the criminal justice system.

The Economic Crime Unit in Orleans Parish makes its own intake and screening decisions and operates relatively independently of the rest of the office. Much of the unit's business is walk-in and proportionately few police-investigated cases are handled.

Salt Lake County's Major Fraud Unit is staffed by two assistants and two investigators. Presently federally funded, the program concentrates on staff and/or police initiated complaints.

The Organized and Economic Crime-Fraud Unit in Dade County receives high priority attention in the office, being headed by the Executive Assistant State Attorney. A collateral and independent Consumer Fraud program also exists, its Chief reporting to the Executive Assistant.

Of the offender based programs, diversion and career criminal are the most familiar. Diversion generally treats first-time nonviolent felony offenders or those with mitigating circumstances. As previously noted, the purpose of diversion is to spare the defendant the weight of criminal justice sanctions and the stigma of a criminal record by releasing him or her to some form of special treatment with the condition that any future offenses will result in a resumption of the legal proceedings. In Lake County, Indiana, the prosecutor (in addition to policy considerations) was prohibited by case law from implementing a diversion program. Some type of diversion program was available in all of the other nine sites; however, only in Kings, Boulder, Dade and Orleans were the programs under direct prosecutorial control.

Only two offices (Boulder and Lake County) did not utilize special programs to prosecute defendants with prior records that are lengthy or serious. These persons have been termed "career criminals" by the Law Enforcement Assistance Administration and have been targeted for special prosecution at both the federal and local levels. Eight jurisdictions had career criminal programs that were initiated with federal funding.

All of the career criminal programs that the team observed had certain features in common. The units were composed of relatively experienced assistants with previous trial work and headed by an

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attorney who was delegated considerable authority.

Although the processing forms varied, a basic form was discernible. This was the early assignment of cases to specially designated career criminal assistants--generally at intake. Assistants remain responsible for a case throughout trial and disposition and plea bargaining was minimized. Three different variations on this form can be seen in the career criminal programs in Orleans, Wayne and King County.

The Career Criminal Bureau in Orleans Parish was probably the most finely honed and complex operation among all the sites visited. There, identification of an offender as a career criminal may be made either by the police or by the screening division in its daily check of all arrests. In either case, the Career Criminal Bureau is notified immediately and, upon verification of the career status of the offender, the Bureau assumes responsibility for the case. Assistants in the Career Criminal Bureau serve 24-hour, on-call duty tours so that response to police notification of career criminal status is immediate. The Bureau takes precedence over all other divisions within the District Attorney's office and will handle any cases that might otherwise be the responsibility of another unit. In contrast to the rest of the office, case assignment to the Career Criminal Bureau starts at intake with the assistant taking it through all the stages of prosecution and even into postconviction activity, as necessary.

The Career Criminal Program in Wayne County, Michigan, is called PROB (Prosecutor's Repeat Offender Bureau). It was initiated in August of 1975. The initial goal of PROB was to handle 350 to 550 defendants, but in actual practice the caseload ranges from about 600 to 650, roughly 50 cases a year for each of the program's attorneys. PROB is defined in terms of target offenses--murder, rape, robbery, burglary and major assault crimes. Intake generally follows the regular office procedures. Sometimes the PROB assistant goes to the warrant desk and interviews the arresting police officer and the complaining witness; more often, a recommendation for a warrant has been made. The day after the warrant has been issued, the PROB assistant fills out the arraignment sheets containing information about the crime. From that time on the unit has exclusive charge of the case and one assistant handles it from preliminary hearing through sentencing.

In King County (Seattle), to reduce the effects of elitism that generally result when career criminal assistants are formed into an organizational unit, cases meeting career criminal criteria are distributed among all the trial assistants according to their experience and skills. As a result, the criminal case processing is indistinguishable from other cases in the office.

The examination of career criminal programs reveals certain common themes which seem to account for successful prosecutions. Cases are more thoroughly investigated and carefully prepared than others in the office. Cases are individually assigned to assistants from intake through trial disposition and even into sentencing. Finally, the most competent and highly experienced trial assistants are usually assigned

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to career criminal programs, thereby producing a better quality of case at all levels. The byproduct, of course, is to show what can be achieved in an office with adequate (or even superfluous) resources.

Special programs offer flexibility to the prosecutor's ordinary case processing flow. They permit the special designation of classes of crimes or criminals, special resource allocations, and special management and operating procedures. In sum, they permit modification and change to a larger, more immovable environment.

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IV. FINDINGS AND CONCLUSIONS

The general purpose of this study was to examine prosecution as it operates under diverse conditions in large urban areas throughout the United States. Its objective was to determine what aspects of the prosecutor's environment and what areas within his control enhance the uniform and equitable distribution of justice. Additionally it was to examine the prevalence of the different styles of prosecution as they exist today in urban areas and note any effects they may have on policy, dispositions or operations.

The study assumed that prosecution should be viewed from a policy perspective if the issues of uniformity and consistency were to be addressed. Since policy guides the decisionmaking processes within an office, it was assumed that the results of decisions would form dispositional patterns that could be used to measure the effects of different policies.

The study adopted the functional analysis approach suggested by the charging policy typology (Jacoby, 1977), divided the prosecutive activities into separate process steps for examination and analysis, and then integrated the separate examinations into an overall analysis of the office's policy and procedures. The specific purposes of this approach were to:

- o Identify the policy within an office;
- o Examine each of the decision process points for consistency with the policy;
- o Identify the factors that were important in the implementation and transfer of the policy; and
- o Isolate the ingredients supportive of the uniform and consistent application of the policy.

Since more than one prosecutor's office was studied, an opportunity for comparative analysis was also provided. The objectives sought in the comparative study differed from those used in studying an individual office. An examination of individual offices may indicate how well a particular policy is being implemented and what its effect is on both the criminal justice system and the local community. The comparison of a number of offices, in contrast, may indicate not only the relative effectiveness of different prosecution systems but also some of the effects of the external environments (including the structure of the criminal justice system) and the policy of the office.

The qualitative analysis of the ten sites studied through on-site visits was used to develop a survey of urban prosecutors nationwide. From these findings, a perspective could be given to the results of the ten site comparative analysis. In part, questions of whether the study was reporting only aberrations or universals could be answered. Additionally, a baseline for the structure and form of prosecution in urban areas could be established. Whether the urban

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survey could identify charging policy types was also tested and found to be generally ambiguous.

The findings and conclusions summarized here integrate these different approaches and their results into a single report. In the first section the findings relating to the examination of the prosecutive process and how it works to implement policy are presented; the second part discusses findings resulting from the comparative examination of the offices and their relevance or applicability to other urban prosecutors. The conclusion presents a suggestion for classifying the findings into a decisionmaking model suggesting new analytical approaches and areas for further research.

Policy and the Application of Policy Within a Prosecutor's Office

A primary task of this research was to verify the charging policy typology through empirical, on-site visits and to note whether there were any amendments or additions to the postulated typology. Since a typology is merely a symbolic representation of the real world, serving at best to set the scope and dimensions of analysis, it was not expected that the one used here was exhaustive or operationally definitive. Its purpose rather was to act as a guide for the study of policy. Consequently, other charging policies were expected to be found in addition to those that led to the development of the typology. Additionally, it was expected that other variations in the implementation procedures would be observed under real conditions.

The results show both conditions to be true. First, although no new charging policies were observed in the field, the study pointed to a need to expand the scope of the typology and to define the relationships between the policies of the original typology.

That the scope of the original typology was too narrow became obvious from the field studies. The original was based on an assumption that charging policies existed in all prosecutors' offices. As a result, it did not include offices where the intake and charging functions were not under prosecutorial control, but performed by others. The typology also assumed that if a charging policy existed, it would be implemented as an office policy through organizational structures which controlled all assistants who made charging decisions.

In two sites, Norfolk, Virginia and Dade County, Florida, the charging decision was not made by the prosecutor, but rather the case was reviewed after the complaint had been filed by the police with the court. (A situation common to 15 percent of the urban jurisdictions surveyed.) In both jurisdictions, although the case was reviewed by the office at a later process step (the accusatory), and the charges sometimes amended, the initial charging decision was in effect transferred to the law enforcement agencies and the magistrate. The prosecutor's response was reactive--modifying, amending and, if necessary, even rejecting. Under these circumstances, the charging typology was clearly too narrow because it did not postulate the

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dispositional patterns that might occur if the charging decisions were made elsewhere.

One should caution that the transfer of these charging decisions to other components of the criminal justice system, either the law enforcement agencies or the court itself, may be either voluntary on the part of the prosecutor or may be the result of structural barriers which preclude activity in this part of the prosecution process. Clearly where police file charges directly with the court and even prosecute the cases in the lower court, or where dual prosecution systems exist within the same court's jurisdiction, the ability of the prosecutor to review the case and come to a charging decision is constrained. The survey showed that this was most likely to occur in jurisdictions that use the grand jury as the primary accusatory medium.

Even if the prosecutor has control over the intake process, one should not assume that charging decisions are made within a context of office policy. In two of the sites, Salt Lake County, Utah and Lake County, Indiana, the charging authority was delegated to individual assistants who routinely exercised their discretionary judgment as individuals. In effect, the individual assistant became a policymaking unit since each could make decisions based on his own policy stance. It is possible to assume, but not verify from this study, that any number of policy stances could be observed in an office. One assistant may seek efficiency, another incapacitation and a third, defendant rehabilitation. Since none is constrained by the controls imposed by an office policy, the variations resulting from an individual decisionmaker's choices may wash out any discernable effect of policy on the dispositional pattern of the office. The familiar practice of "assistant shopping" may serve as a sensitive indicator to the existence of this delegation model.

On the other hand, one cannot discount the effects of socialization, collegiality or peer group pressure. Some or all may combine to create and sustain an unarticulated charging policy that will produce distinguishable and uniform effects within an office. The tests for uniformity and consistency given in Salt Lake and reported in the companion volume Prosecutorial Decisionmaking: A National Study show that in Salt Lake there was obvious agreement about adopting a conservative, intensive screening, trial oriented posture despite the unit form of charging. Yet, the effects may vary. For example, if an office is equally divided in its perception of justice, then the effects of one policy may be offset by the effects of the other. Of all the types of charging situations, the unit type is most problematical since its consequences are difficult to predict in a logical or consistent fashion.

The charging policies that operate within an office--controlled and supervised by organizational and management procedures--and posited by the typology were all observed in the field. However, the justification for the inclusion of a defendant rehabilitation policy in the typology was suspect since it was not based on the same assumptions as the others. The process-oriented policies of Legal Sufficiency, System Efficiency and Trial Sufficiency fall into a natural progression

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of intake criteria ranging from those based on minimal acceptance criteria to those requiring rigorous proof and trial standards. Defendant rehabilitation was a goal oriented policy, not a process oriented one as the others were. Therefore, its inclusion in a process typology can not be justified and its abandonment is recommended.

Some of the offices studied were in the midst of change, moving from the unrestrictive acceptance standards of the Legal Sufficiency policy to those of System Efficiency. The process of alteration was observed most notably in Kings County (Brooklyn) where the policy of the prosecutor combined fortuitously with changes in police booking procedures to produce a more efficient intake procedure. With effort and ingenuity, it appears possible for a prosecutor to move from a Legal Sufficiency policy to one of System Efficiency by establishing more control over the intake function and the charging decision.

Not quite so simple is the progression from System Efficiency to Trial Sufficiency. This is primarily because, to meet the Trial Sufficiency conditions, one must impose tight management controls on policy decisions and also have sufficient court capacity. Since the policy calls for accurate charging with minimal modification to that charge by plea negotiations or dismissals, convictions at trial are expected. Lacking court capacity, the eventual buildup of backlog should produce a powerful argument for policy change.

It is also possible to reverse the progression. In King County (Seattle), for example, the previous charging policy was one close to a trial sufficiency stance. Cases were accepted only if they were strong enough to sustain a conviction. During the term of the prosecutor, however, acceptance criteria were changed to allow in more of the evidentiarily marginal cases and to judge the correctness of the decisions to accept by whether they survived probable cause determinations. With these expanded acceptance standards, the office had moved in the direction of Legal Sufficiency.

The functional approach adopted for this study divided prosecution into process steps, each ending with measurable decision points--the charging decision ended the intake process; arraignment, the accusatory process; disposition, the trials process and the outcomes of sentence recommendations, appeals, expungements and opposition to parole and pardons ended the postconviction process. This approach required the research to consider two questions:

- How was policy implemented within the different decision process steps?
- How were these process steps integrated to reflect the overall goals of the office?

If the answers could be obtained to these questions, the factors affecting policy and its implementation could be isolated and controlled in future research.

The internal examination of decisionmaking in the separate

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process points produced the following findings. First, and of major importance, was the transitory nature of all these process steps except one. The decisionmaking aspects of intake, accusation and postconviction activities are not automatically integral to prosecution or given equal emphasis in their application. Prosecutorial decisionmaking functions in the different process steps may be abandoned (most notably at the ends of the process--intake and postconviction), they may defer to the review and decisions of other components (the accusatory process can be used as an example), or they may be given the highest priority in the office. What emphasis they are given depends on either the structure of the criminal justice environment or on the policy and priorities of the prosecutor.

There is only one process step where decisionmaking activities remain relatively constant and which cannot be abandoned or transferred--that is the trials to disposition process. Here, the prosecutor must represent the interest of the state and present the state's case in a court of law. This responsibility cannot be shifted elsewhere either deliberately or by default, nor can structural barriers be established to prevent its occurrence.

In contrast, it is possible to transfer the intake function to other components of the criminal justice system. This was observed in Dade County, Norfolk and in the former Kings County where cases were not reviewed by the prosecutor's office until after they had been filed in the court. The charging decision--whether to charge or not and at what level--was not under the control of the prosecutor. As a result, with no control over this most critical decision, the prosecutor was placed almost instantly in a reactive stance, correcting or modifying these decisions as needed. This is in direct contrast to the proactive operating position an office can assume if it controls the intake decision.

The importance of the accusatory process as part of the prosecutor's decision function depends on: (1) whether the prosecutor controls the intake decisions; (2) the structure of the accusatory process itself; and (3) the extent to which judicial control activities are in conflict with those of the prosecutor.

If the prosecutor is an active decisionmaker in the intake process, then the accusatory process merely serves as a second review of case information and, if still acceptable, as a pro forma means of accusation, a ritualized procedure that formalizes the charging decision. If, on the other hand, the intake function has been transferred to other components of the system, or the quality of the information presented for the charging decision is inadequate, then the role of the accusatory process changes since it represents the first decision opportunity to permit the correction, modification or even rejection of previous arrest or charging decisions.

The environment within which accusation is performed produces prosecutorial responses that differ according to the structure available. The simple and traditional arrest to grand jury route is the easiest to place under prosecutorial control. If intake decisions are

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made by the prosecutor, the grand jury can serve as the much criticized "rubber stamp"; if they are not, it offers itself as a correcting mechanism.

The ability of the prosecutor to impose his policy priorities on the justice system is most clearly observable in the more complex accusatory procedures, as when the accusatory process is redundant and a probable cause hearing produces a bindover to a grand jury and a subsequent indictment. When both accusatory routes are available, the prosecutor is provided extra room in which to achieve his goals.

The type of probable cause hearing conducted has an important influence on the decision processes in this step and the resources needed to support it. Preliminary hearings range from the pro forma probable cause hearing (the Rhode Island model) that determines only whether there is probable cause to restrict the liberty of the defendant to a "full-blown," adversarial, mini-trial. At the Rhode Island model end of the spectrum, the prosecutor's charging decision needs only to meet legal sufficiency standards, reviewed with respect to more proof or testimony as to whether there is probable cause that the defendant committed the crime; and at the far end, the decision must stand against a standard of proof that shows that the defendant is probably guilty.

The postconviction process, like intake, is another process step that is not necessarily integral to the prosecutive system. Yet, it provides a revealing picture of the prosecutor's perception of his role and function. Those prosecutors who normally define their function as lawyers attending to the trial stage, rarely perceive the need for, or the means of, extending their function into this process. With the exception of appeals, there is little tradition or expectation that other activities in this area are an integral part of the prosecutive process. Yet, the impact of these activities, where they were observed (most notably in Orleans Parish and Boulder) was so strong and so wide ranging that it is clear this process step needs further, more careful, study of its scope and the potential dimensions of its impact on the wider community. The increased demand for postconviction remedies, the call for determinate sentencing, the legislation of habitual offenders' acts and sentence enhancements, the introduction of sentencing guidelines all have the ability to profoundly affect the prosecutor's decisionmaking functions. They generally have expanded the power of the charging decisions, strengthened the accusatory process and increase the number of strategies available for bringing cases to satisfactory disposition in the trial process. However, these new trends are not totally beneficial to prosecution. A notable difficulty stems from the mandatory nature of some of the laws which has produced new demands on prosecutorial (and judicial) inventiveness to devise means to mitigate the inflexibility inherent in these mandated punishments.

The trials process is the one decision area that cannot be transferred to other components of the criminal justice system for decisionmaking. It is in this process that the state presents its case for judicial determination. It is also in this process that the power of the prosecutor is most circumscribed. Within the constraints imposed by the docketing procedures of the court, its continuance policy, court

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rules and capacity, the prosecutor structures and performs his trial duties. His major goal is to maximize the probabilities of obtaining satisfactory dispositions based on a priority ordering of cases. The key factors in achieving these goals may be observed in the strategies that are employed, such as diversion, plea bargaining, discovery, etc., and the amount of discretion permitted to the assistants. In all the offices observed, the trial processes were attuned to the policy of the office. This should not be unexpected since the final disposition is the ultimate measure of prosecutorial performance. Whether discretion in plea bargaining or dismissals were permitted or controlled depended on whether the office was seeking swift dispositions or incapacitation. Whether marginally strong cases were dismissed or reduced for a plea, depended on whether the office based its trial responsibility on the legally admissible facts or the evidence of guilt even if not legally admissible.

There are interactive effects among the process steps that also must be taken into consideration. If one or more process steps are abandoned either by choice, tradition or otherwise, the effect is to place prosecution in a position of correcting or changing another's decisions. This has the effect of limiting the prosecutor's ability to proactively develop and implement strong office policy. The net effect is to diffuse the power of the prosecutor in the criminal justice process by transferring it to other components--police, defense or the court.

This finding, of course, reaffirms the primary importance of prosecutorial control over the intake function and the charging decision. Not only does it permit the setting of standards and policy for the entire office, but also the development and maintenance of a balance of power between the various court actors. If the intake function is carefully structured and controlled, the office is placed in its most powerful position. In jurisdictions where the intake and charging decisions are performed by individual assistants at their discretion, then the concept of an "office" is weakened and the ability of the prosecutor to control these decisionmaking activities within a policy framework is weakened as well.

A problematical effect stemming from the sequential nature of prosecutorial decisionmaking processes is the tendency for each process step to be treated autonomously and independent of office policy. This is because the decisions at the ends of the process steps lend themselves to evaluation independent of the total office policy. Since each major decision point represents the end of an easily identified process task, they can stand alone. Only by establishing communications, feedback and accountability procedures can the tendency to measure success and failure in terms of these tasks be diminished. The assistant who defines his success at preliminary hearing as getting a case bound over for trial and who is not held accountable for its subsequent dismissal at the trial level presents as much an indicator of this effect as is the phenomenon of assistant shopping at intake. The need for the concept of an "office" to control, monitor and assign accountability among the parts is clearly obvious when viewed from this perspective.

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It is within the conceptual frame of an office that the full range of the prosecutor's decisionmaking activities can be seen and the ingredients for successful policy implementation identified. Starting with a prosecutor who assumes the role of administrator, planner, policymaker, and with all due respect, office head, priorities are established and decisionmaking authority is delegated down through clearly established chains of command. Within this office structure, the selection and use of programs and strategies are made, assignment of personnel effected and the limits of discretion set and controlled. By a daily monitoring of case dispositions and with circular communications and feedback patterns, the implementation of prosecutorial policy is practically assured. As each of these ingredients are abandoned or weakened, the problems of control arise and with them a lack of consistency in the application of policy.

The Relative Effectiveness of Policy Among Offices

The field studies were able to distinguish among different types of prosecutors' offices and to classify them by their charging policies. Having done this, the question of their relative effectiveness was next to be addressed. This is not a simple task, nor is it answered here. There were a number of problems that could not be overcome in this study and most of them relate to finding appropriate measures, and being able to interpret the numbers. This latter problem focuses on the importance of knowing both the structure of the criminal justice system, and the priorities of the prosecutor before effectiveness can be judged. Reliance on dispositional measures invokes some restrictions on making comparative assessments of effectiveness that should be noted.

If a comparison of prosecutors' offices is to be made with respect to the dispositional patterns produced by the office, the first step is to determine whether the offices are operating in similar criminal justice system environments. Until this determination is made, one cannot separate the effects on dispositions that are beyond the prosecutor's control from those that are within his control. For example, if one jurisdiction is required by law to review and approve all applications for a warrant (as in Wayne) and another receives the case only after the charges have been filed in the court (as in Dade), then the percent of cases accepted or rejected for prosecution will vary according to the opportunity afforded the prosecutor to make such a decision. Without noting the constraints and structure of the environment first, the explanatory basis for any comparative analysis is significantly weakened.

Once the external environment has been identified so that its effects can be accounted for (either partially or totally), it is then necessary to identify those differences which are due to the policy of the prosecutor with respect to charging and the performance of his duties. We have seen that these patterns will vary by policy. Thus, comparisons should not be made without determining, first, the policy and goals of the offices since they affect dispositional patterns. For example, the high jury trial rate in Orleans is an expected consequence

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of the charging standards and the barriers set against plea bargaining. To compare these dispositions with those of Kings County, which must rely on pleas to dispose of its huge volume and to keep the backlog under control is clearly unfair. Each office is attempting to do something different.

This leads, of course, to the final conclusion that using dispositional data to compare jurisdictions should include a recognition of the priorities of the office and its policy. It is clear then that comparative analyses should be performed among offices that inhabit similar criminal justice environments and operate with similar policies. It is under these more idealistic conditions that a true measure of the relative effectiveness of prosecutors' activities can be made. Thus, while the goal of this study is to measure the relative effectiveness of different policies, it must still remain long-range.

Despite this limitation, a foundation has been established for its attainment. The study verified the existence of charging policies and their impact on dispositional strategies and patterns. The ten sites presented a full range of differences in types of intake procedures, accusatory processes, court systems and other aspects of the criminal justice system. Although other charging policies may still exist, they were not found in this investigation, nor were they identified from the responses to the survey.

What was found was the need to extend the intake classification system to include jurisdictions where the prosecutor did not make charging decisions and those where the decisions were made autonomously by assistants based on their own policy and values.

As a result, it is possible to postulate three basic prosecutorial organizational styles of decisionmaking; (1) a transfer style that shifts many traditional prosecutive decision functions to the law enforcement and/or judicial components of the system; (2) a unit style wherein the individual assistant is given autonomy in decisionmaking; and (3) an office style in which the chief prosecutor selects a course of action for the decisionmakers, structures the office and delegates decisionmaking authority accordingly. It is in this latter category that the charging typology may be posited.

The study further found that the control the prosecutors exercise over their agency which ultimately effects criminal justice is a function of: (1) their definition of their role and function as policymaker; (2) the organizational styles of decisionmaking established for all the process steps; and (3) the ability of the office to implement a charging policy and control the intake process.

When charging policies exist they set the base for the organization, administration and operating procedures of the office. They also produce dispositional patterns, that in combination with some exogenous factors, appear to be capable of providing an objective way to indicate the operant policy.

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Prevalence of Policies

Part of this study was to determine the prevalence of different prosecutorial procedures. To do this presupposes that descriptions of the universe are available. They are not; the small subset documented in this study should only be indicative of larger offices. For these jurisdictions, a baseline for other evaluations or research can be made. Thus, the survey of urban prosecutors is an important step but it is not capable of establishing the frequencies of different policies and styles for all jurisdictions. However, it did shed light on the dynamics of decisionmaking and their effects on dispositions in larger offices. Clearly, a further enumeration of those prosecutors who work in the smaller offices needs to be made.

From the survey and the on-site studies there emerged some sense of prevalence of organizational style and its effects on the entire adjudication process. Well documented is the diversity that exists in the prosecution function. In 15 percent of the jurisdictions, the prosecutor is not involved in making charging decisions. The vast majority (85%) not only review cases for the charging decision, but also make use of their declination power.

Whether the prosecution function relies on the grand jury for indictment, as was the case in 14 percent of the jurisdictions, or whether it proceeds on a direct bill of information (34%), bypassing judicial review, has an important effect when combined with the preceding intake stage.

Under transfer conditions (15%) where cases were not reviewed for charging, what would have been declinations are shifted for exit to either the first appearance, preliminary hearing or grand jury. In addition, it appears that the transfer type of operation does not exist when an bill of information is the primary accusatory instrument. Only when the grand jury is the primary or secondary accusatory vehicle does this happen. The effects of the transfer style of operation appear to be a loss of control, a reactive response to police arrests, and a catch-up stance with respect to case dispositions later in the process.

The unit organizational style of operation (36%), wherein each assistant is allowed to make charging decisions without being assigned to a specific organizational unit in the office may stem from either a decentralized organizational form or the utilization of a trial team approach. A trial team approach means that cases are assigned to an assistant who carries them through to disposition. The analysis of the effects of this type of operation shows that while it results in no significant differences in the type of dispositions, it does, however, increase continuity in case processing to a higher level than found in the other two models. Because the attorneys have control of a case from intake to its final disposition, they have a greater likelihood of uniformity and consistency in decisionmaking.

Jurisdictions adopting an office model (49%) set up a separate organizational unit to handle the intake function. The level of declinations varies from a low of less than 7 percent (in 18 percent of

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the jurisdictions) to highs of 50 percent or more in others (8%). It is in this group of offices that policy differences are more likely to emerge. Whether an office is plea oriented or trial oriented, whether cases will be reduced for pleas or whether a no reduced plea policy is adopted are the major issues addressed.

Thus, what the survey indicates and the on-site visits support is the existence of different organizational styles of operation; The fact that their characteristics can be specified justifies the extension of the enumeration to smaller offices. This ability provides another building block for our attempts to identify homogeneous groups susceptible to policy and program transfer.

Conclusion

Despite all the diversities that abound in the prosecutorial function and in the different styles of operation, there is an underlying stability in the process as a whole. This can be best noted by examining the proportional distribution of all dispositions as they occur in each of the different accusatory routes. A distinction is made in an accusatory process using indictments between those jurisdictions where cases are reviewed prior to charging and those where they are not. For a process using a bill of information (either resulting from a preliminary hearing or a filing of a direct bill of information) this distinction is not necessary since in this sample, prosecutorial case review is always present.

Figure 11 shows the proportion of adjudicated and non-adjudicated dispositions for 53 jurisdictions by type of accusatory process and their location in the process step. An examination of this figure shows some interesting results. Most clear is the fact that more cases will be disposed of at the intake step if a jurisdiction has the power to review cases before they are filed. More economies to the system are gained if jurisdictions use either preliminary hearing or grand jury as the accusatory vehicle than if cases are directly filed by a bill of information. Conversely, both the "no intake review" (transfer) jurisdictions and jurisdictions that review at intake but do not have a review step in the accusatory process (i.e. file direct bills of information), dispose of a greater proportion of their cases at the trial stage than other types of accusatory systems.

Looking in more detail at the dynamics of non-adjudicated dispositions (Figure 12), the pattern emerging is one of rationality. Ten to twenty one percent of the caseload are declined at intake where such power exists. Twice as many declinations are made in systems that use bill of information as the accusatory instrument than those using grand jury indictments. Obviously, declinations are not possible when case review prior to filing is absent. Where there is no case review prior to filing, the first appearance becomes the initial exit point for what probably would have been declinations (15% dismissed as compared to rate of 3, 0 and 0 in the other types).

At first glance, dismissal rates tend to vary dramatically from a

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FIGURE 11

ADJUDICATED AND NON-ADJUDICATED DISPOSITIONS
BY TYPE OF ACCUSATORY PROCESS

Accusatory	Total Dispositions	Proportion Disposed at Process Step				
		Intake	First Appearance	Preliminary Hearing	Grand Jury	Trial
Grand Jury or Preliminary Hearing to Grand Jury Without Case Review:						
Nonadjudication. . .	34	0	15	2	8	9
Adjudication	63	0	7	4	0	52
Grand Jury or Preliminary Hearing to Grand Jury With Case Review:						
Nonadjudication. . .	44	10	3	3	18	10
Adjudication	54	0	0	10	0	47
Preliminary Hearing:						
Nonadjudication. . .	35	20	0	7	0	8
Adjudication	64	0	0	19	0	45
Bill of Information:						
Nonadjudication. . .	29	21	0	0	1	7
Adjudication	69	0	0	0	0	69

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low of 7 percent to a high of 26 percent (see Figure 12). The highest dismissal rate occurs in jurisdictions that do not review cases before they are filed. However, this is probably because they do not decline cases at intake and therefore shift the exit point over to the first appearance hearing which has the highest dismissal rate of all of the accusatory procedures. Where there is an opportunity to review cases prior to filing, the dismissal rate is reduced.

The lowest rate occurs where no accusatory review exists. The explanation for this is not clear. The 7 percent dismissal rate is accompanied by the highest (61%) plea rate (see Figure 13). What is disturbing about this type of procedure is that one could interpret this to show that what in other systems would be dismissed in the accusatory process, appears to be plead out at the trial stage. This interpretation is supported by the fact that the dismissal rate at the trial stage is fairly constant over all types of systems (7-10%).

For adjudicated dispositions, Figure 13 shows that adjudications do not occur at the first appearance hearing in jurisdictions that review charges. However, where there there is no review, 7 percent are reduced for pleas at the first appearance. In jurisdictions that use an arrest to preliminary hearing to bill of information accusatory routes, one fifth of the cases are disposed of at the preliminary hearing.

Clearly, the most efficient system would seem to be the grand jury with case review. Under this system, only 54 percent of the cases are adjudicated, compared to 63-69 percent of the cases under the other types of accusatory modes. Upon first consideration, one might think that the arrest to direct filing of information would be the most efficient process, however, this mode turns out to be the most inefficient. The primary reason for the inefficiencies in this mode is that it does not contain any decision points in the early stages of the processing of a case where a disposition can be made. Once a bill of information is filed, the case moves directly into the trials stage of processing. Figure 13 shows that plea rate at the trials stage for this type of accusatory mode is 61 percent, compared to 37-41 percent in the other types of accusatory processes.

Conversely, the most efficient system, the grand jury or preliminary hearing to grand jury with case review, contains many points where decisions can be made about a case. At each individual process point, some cases exit from the system, leaving fewer to be adjudicated.

Although these statistics are informative, a note of caution must be interjected. These statistics are based only on a total of 53 jurisdictions. However, the pattern of dispositions can provide rich insights for future research investigating the effects of different accusatory routes on dispositions.

One may conclude that for all of the policy and procedural variations that exist in the United States, those documented by the survey and by the study of 10 sites, there appears to be an immutable standard that sets the percent of cases moving to trial and which

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FIGURE 12

PROPORTIONAL DISTRIBUTION OF NON-ADJUDICATED DISPOSITIONS BY ACCUSATORY TYPE AND PROCESS STEP

Accusatory	Total Dispositions	Proportion Disposed at Process Step				
		Intake	First Appearance	Preliminary Hearing	Grand Jury	Trial
Grand Jury or Preliminary Hearing to Grand Jury Without Case Review: Total	100%	0	22	6	8	63
Nonadjudication.....	34	0	15	2	8	9
Decline.....	0	-	-	-	-	-
Dismiss.....	26	-	15	2	-	9
No true bill.....	8	-	-	-	8	-
8 Jurisdictions						
Grand Jury or Preliminary Hearing to Grand Jury With Case Review: Total	100%	10	3	13	18	57
Nonadjudication.....	44	10	3	3	18	10
Decline.....	10	10	-	-	-	-
Dismiss.....	16	-	3	3	-	10
No true bill.....	18	-	-	-	18	-
21 Jurisdictions						
Preliminary Hearing: Total	100%	20	0	26	0	53
Nonadjudication.....	35	20	0	7	0	8
Decline.....	20	20	-	-	-	-
Dismiss.....	15	-	-	7	-	8
No true bill.....	0	-	-	-	-	-
7 Jurisdictions						
Bill of Information: Total	100%	21	0	0	1	77
Nonadjudication.....	29	21	0	0	1	7
Decline.....	21	21	-	-	-	-
Dismiss.....	7	-	-	-	-	7
No true bill.....	1	-	-	-	1	-
17 Jurisdictions						

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FIGURE 13

PROPORTIONAL DISTRIBUTION OF ADJUDICATED DISPOSITIONS BY ACCUSATORY TYPE AND PROCESS STEP

Accusatory	Total Dispositions	Proportion Disposed at Process Step				
		Intake	First Appearance	Preliminary Hearing	Grand Jury	Trial
Grand Jury or Preliminary Hearing to Grand Jury Without Case Review: Total	100	0	22	6	8	63
Adjudication.....	63	0	7	4	0	52
Reduce.....	11	-	7	4	-	-
Plea.....	41	-	-	-	-	41
Trial.....	11	-	-	-	-	11
8 Jurisdictions						
Grand Jury or Preliminary Hearing to Grand Jury With Case Review:	100	10	3	13	18	54
Adjudication.....	54	0	0	10	0	44
Reduce.....	5	-	-	5	-	-
Plea.....	43	-	-	5	-	38
Trial.....	6	-	-	-	-	6
21 Jurisdictions						
Preliminary Hearing:	100	20	0	26	0	53
Adjudication.....	64	0	0	19	0	45
Reduce.....	10	-	-	10	-	-
Plea.....	46	-	-	9	-	37
Trial.....	8	-	-	-	-	8
7 Jurisdictions						
Bill of Information:	100	21	0	0	1	76
Adjudication.....	69	0	0	0	0	69
Reduce.....	0	-	-	-	-	-
Plea.....	61	-	-	-	-	61
Trial.....	8	-	-	-	-	8
17 Jurisdictions						

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disposes of cases in an orderly fashion as they progress through the adjudication process. The importance of this is that these rates are apparently independent of the size of the jurisdiction (although this phenomenon may be unique to large jurisdictions).

What they seem to imply is that there exists some level of court capacity that is fundable allowing for a low (but constant) trial rate and forcing the remaining cases to move out by different types of dispositions at different exit points. This offers more supporting evidence to the finding of rationality existing within the prosecution system as indicated by the standard case set tests. They show that there is even predictability in the decisionmaking process. What appears on the surface to be a system of contradiction, differences and consistency, is not. In reality it appears that policy and procedural variations are overlaid on a consistent and essentially stable function.

In addition to this major conclusion, other findings emerged that were also important but of narrower scope. One is that declinations at intake apparently are affected by procedures used in police reporting systems. The survey showed that if the detective brought the report over and was available for interview by the prosecutor, then the likelihood of having higher declination rates was significant. The implication of this is that as more information is made available to the prosecutor, he is better able to make positive decisions (such as declining cases for prosecution) rather than default decisions. The latter results in cases being passed on to the next stage in the process where, hopefully, enough information will be accrued and the decision about a dismissal can be made. This finding argues for giving the prosecutor sufficient and adequate information and enough time to make charging decisions. If this occurs, then there could be economies of at least 20 percent in caseload processing since declinations would occur up front at intake rather than being passed to other (and later) court processing points.

Coincidental with this is the significantly different pattern of operation that occurs when the prosecutor does not review charges before they are filed in court. This condition may be a holdover from the more traditional forms of criminal justice that existed in the 17th and 18th centuries when police dominated the criminal justice environment and the prosecutor was viewed only as an officer of the court. Even today some vestiges remain in Massachusetts where police prosecutors operate in the lower courts and in Connecticut where prosecutors are appointed by judges. If a conclusion is to be offered, it is that the prosecutor and the criminal justice system are at a disadvantage when there is no prosecutorial review of charges before they are filed in the court. The system quite simply has to dispose of cases that should never have been admitted. Comparing this situation to jurisdictions where prosecutors do review cases before filing points up the economies and efficiencies accorded to the entire adjudication system.

The original typology expressed the effects of policy as disposition rates that were "high" or "low," "maximized" or "minimized." Although these were useful statements for conceptual explorations, they suffered from lack of measurement and quantification. An attempt to

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measure these concepts and fix expected disposition rates within individual policy types was undertaken; and an effort was made to identify the differences that distinguish one dispositional pattern from another and to identify similarity of areas which can be defined as not sensitive to policy variation.

The results of this effort did not meet the original expectations. Although the various distributions of decisions occurring at each of the process points could be described and measured, the quantification of different styles of operation was not as easy. It was possible to develop some ratios that measure standard operating conditions existing in the United States in 1980. However, they do not have the ability to declare what is good or bad, high or low, acceptable or nonacceptable.

Figure 14 below shows three ratios of importance: The ratio of the annual number of cases disposed of by plea per judge; the ratio of the annual number of cases disposed of by trial per judge; and the ratio of the annual number of felonies prosecuted per assistant prosecutor. Beside each of the ratios is the .95 confidence interval which is the range that contains 95 percent of all the ratios. The ratio of 96 felonies per assistant in an office is consistent with the earlier ratio of 99 felonies per assistant that was reported in the 1972 survey conducted by the National Center for Prosecution Management. This indicator of approximately 100 felonies per assistant has been useful in providing a baseline for prosecutor's staff size. The stability of this measure over the last eight years is also interesting. Whether its reduction from 99 to 96 is a reflection of sample bias or the increasing complexity of the prosecution function cannot be determined here. With 95 percent of the jurisdictions operating within a range of 75-110 felonies per assistant this measure provides a first clue as to the adequacy of attorney staff size.

FIGURE 14

MEDIAN WORKLOAD INDICATORS AND CONFIDENCE INTERVAL

Workload	Median	95% Interval
Number of felonies annually processed per assistant.....	96	75 - 110
Number of cases disposed of annually by pleas per judge.....	115	93 - 177
Number of cases disposed annually by trials per judge.....	24	19 - 30

The ratios of the annual number of cases disposed by pleas (15) and trials (24) per judges sitting in criminal court is reasonable and

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lends itself for future testing in subsequent research and planning. The Standard Case Set showed that one of the most stable predictions the prosecutor could make was that of which cases would be disposed of by trial. As we have seen from the survey, this translates into about 9 percent of the total dispositions. Placing this percent in conjunction with the ratio of 24 trials per judge per year establishes another relationship between court capacity and trials. Again it does not evaluate system capacity. Whether one should increase the number of trials and decrease pleas, or whether one should attempt to reduce even further the number of trials are clearly policy questions not within the scope of this research. They are of interest, however, and certainly should be subjected to further discussion.

This study and the companion Standard Case Set testing has clearly demonstrated that order and rationality prevail in prosecutorial decisionmaking systems. The qualitative assessments of sites, the survey of urban prosecutors and the testing of the 855 prosecutors and assistant prosecutors in 15 jurisdictions have all substantiated the fact that there is a high level of uniformity and consistency among decisionmakers; that they disagree and differ in areas which can be identified. How much variation can be tolerated before a system or decisionmaking process is declared inconsistent or discriminatory has yet to be determined. It has not been answered by this research.

If society's goal is to ensure that prosecution is administered fairly and equally regardless of the policy chosen, it is necessary first to determine the limits within which discretion is permitted and concomitantly the stages in the prosecution process where this is important and where it is not. This latter point has been better addressed by this research. The former question has not. How cases are brought to disposition by a trial assistant, for example, is relatively unimportant as long as the disposition is the expected one or an agreed upon alternative. The tolerance level surrounding changes in expected dispositions or acceptable alternatives clearly needs determination.

It is here that this research stops and obviously calls for the next step which is to determine how one defines what is acceptable and then measures when violations occur. This cannot be done by statistics alone. Rather it needs the empirical assistance of agency heads and policy leaders. Yet is is not impossible. Based on all the prior steps that have been taken, research in this area should be able to produce these techniques and definitions. If one can vision a quality control chart, then the concept of acceptable ranges of decisions can be analogized. Determining the limits of uniformity and consistency is crucial if evaluations are to be made about the quality of justice, not merely its properties.

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APPENDIX A

A QUICK REFERENCE TO RESULTS OF THE 1980 SURVEY OF URBAN PROSECUTORS

The following descriptive statistics are the results of a nationwide survey of selected prosecutor's jurisdictions as part of a National Institute of Justice Research on Prosecutorial Decisionmaking grant*, in the Winter/Spring of 1980. The purpose of the survey was to identify and describe the nature of prosecution in 124 urban areas of the United States, and highlight the diversity in styles of operation. The survey was directed primarily to jurisdictions having populations of at least 450,000.

The data presented here are based on responses from 80 jurisdictions. The responses may not necessarily reflect all 80 jurisdictions because of missing data or not applicable questions. Therefore, the tables reflect only those jurisdictions who were able to answer a particular question (Number of respondents is indicated by N). No missing data are presented. The exact number of jurisdictions responding to any one question, can be provided upon request.

The organization of the results is based on a functional division of the operations of a prosecutor's office. The sections that follow are: A) Criminal Justice System Facts; B) Prosecutor's Office Facts; C) Intake Phase; D) Accusatory Phase; E) Trials Phase; and F) Post-Conviction Phase.

* Grant number 79-NI-AX-0034

The views expressed herein are solely the responsibility of the authors and do not reflect the official position or policies of the National Institute of Justice, LEAA, or the Department of Justice.

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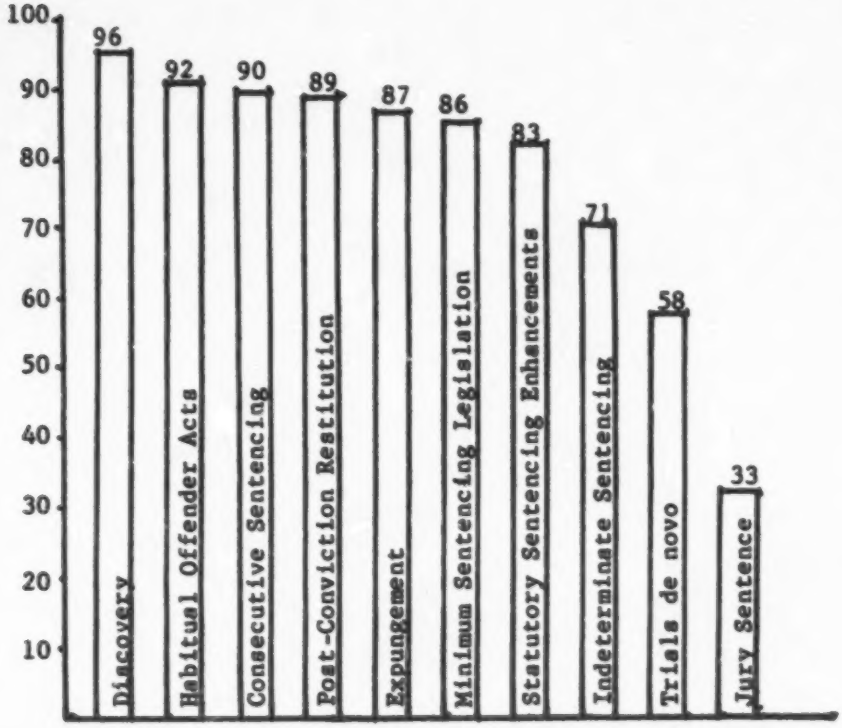
1980 SURVEY OF URBAN PROSECUTORS

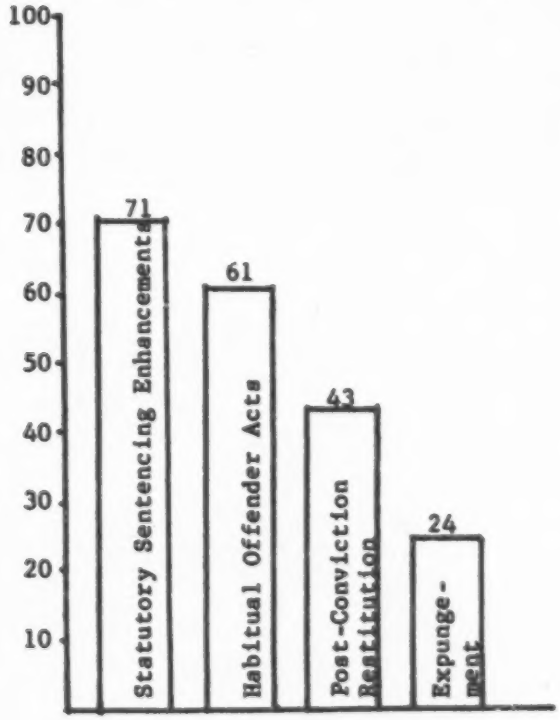
BASED ON REPORTS FROM 80 JURISDICTIONS

A. Criminal Justice System Facts		No. Responding
1. Number of police agencies in jurisdiction		N=79
Median	16	
Range	1-72	
2. Police access to centralized booking facility?		N=76
Yes	86%	
No	14%	
3. Misdemeanor and Felony Court System?		N=77
Yes	42%	
No	58%	
4. Number of Criminal trial courts (felony and misdemeanor)		N=81
Median	11	
Range	1-78	
5. Type of felony docketing system		N=81
Individual calendar	52%	
Master assignment	43%	
Other	5%	
6. Court's continuance policy		N=81
Strict	15%	
Available if needed	48%	
Liberal	37%	
7. Backlogged felony trial court?		N=80
Yes	64%	
No	36%	
8. Operate with speedy trial rule?		N=81
Yes	85%	
No	16%	
9. If speedy trial rule, how often do problems exist?		N=70
Routinely	9%	
Seldom	91%	

10. Percent of jurisdictions having different laws or procedures available: N=79



11. Percent of jurisdictions using different laws or procedures when applicable: N=77



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B. Prosecutor's Office Facts — No. Responding

1. Years chief prosecutor has been in office — N=77

Median	5 years
Range	1-29 years

2. How many assistant prosecutors employed by the office? — N=80

Median	30
Range	3-503

3. Access to investigators? — N=80

Yes	95%
No	5%

4. Type of personnel system for assistant prosecutors — N=80

Serve at pleasure	75%
Civil Service	12%
Merit	9%
Other	4%

5. Assistants unionized? — N=80

Yes	18%
No	82%

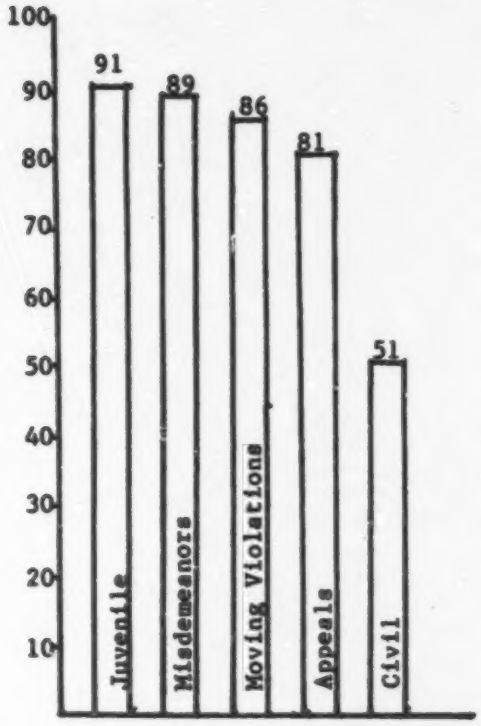
6. Are there branch offices? — N=78

Yes	77%
No	23%

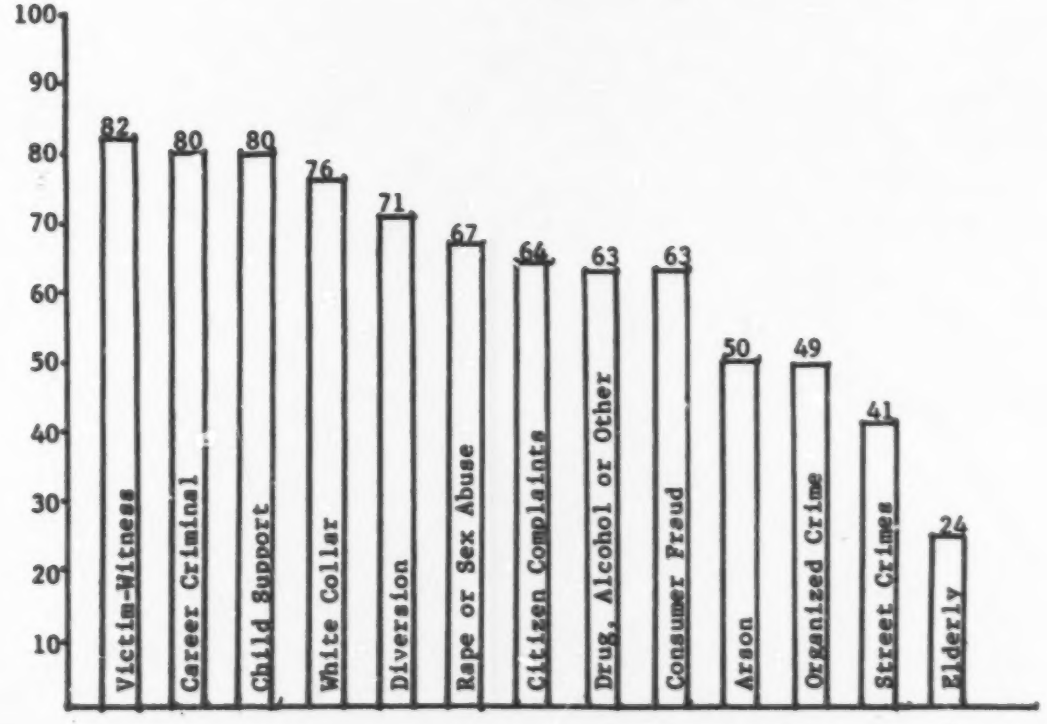
7. Starting salary for assistants — N=80

Median	$16,000
Range	$12,000-23,000

8. Areas of prosecutorial jurisdiction: N=80



9. Percent of jurisdictions participating in various programs: N=79



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C. Intake Phase

		No. Responding
1. Does the office review felony charges before they are filed in Court?		N=81
Yes	85%	
No	15%	
2. Does the office review misdemeanor charges before they are filed in court?		N=68
Yes	74%	
No	26%	
3. How many felonies referred to the office?		N=72
Median	3,186	
Range	200 - 50,000	

C-1. Intake for Those Jurisdictions Reviewing Felony Charges Before Filing

1. How long after arrest are charges filed? N=66

Immediately	9%
W/in 24 hours	24%
W/in 1 week	39%
More than 1 week	27%

2. Percent of cases declined for prosecution N=62

Percent Declined	Percent Jurisdiction
0-7%	18%
8-13%	26%
14-27%	29%
28-100%	27%
Range	2%-80%

3. Intake unit exist with charging responsibility N=68

Yes	57%
No	43%

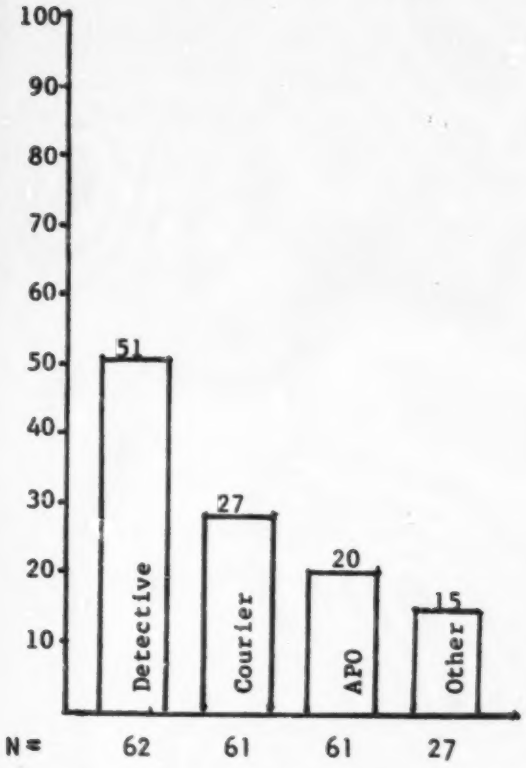
4. Intake assistant prosecutors aware of case dispositions? N=65

Routinely	57%
Seldom	43%

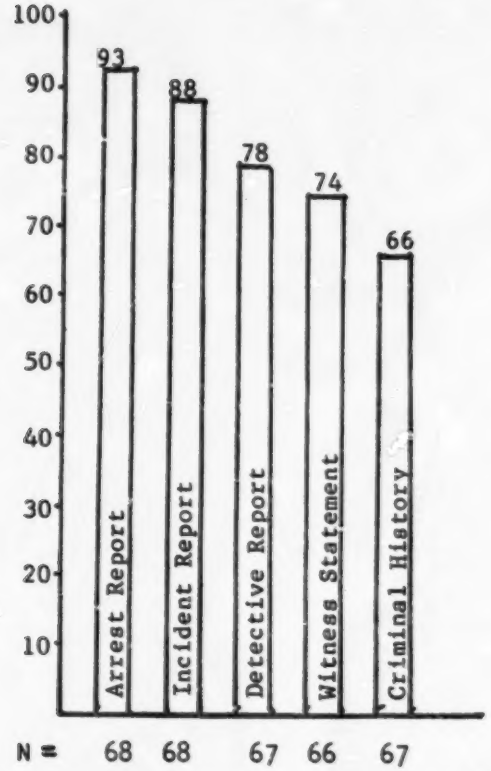
5. Intake assistant prosecutors aware of sentence imposed? N=66

Routinely	44%
Seldom	56%

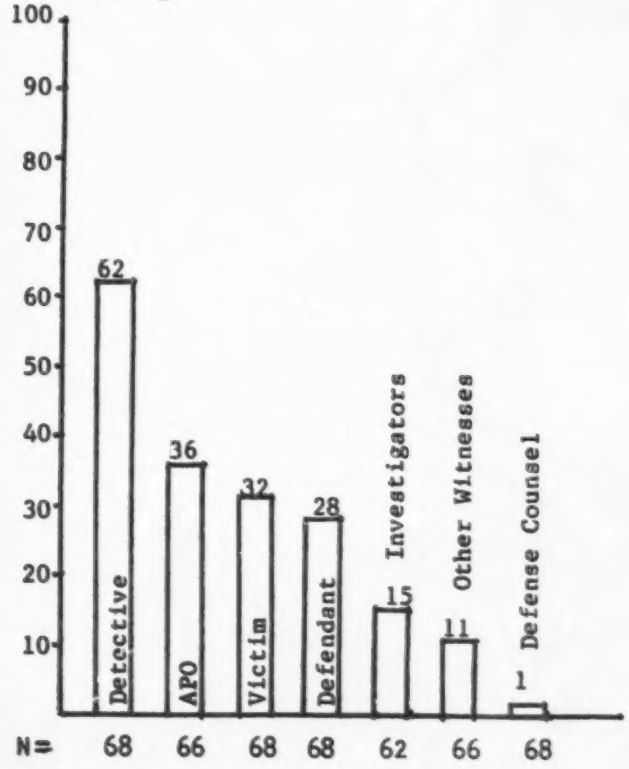
6. Who brings cases over most often:



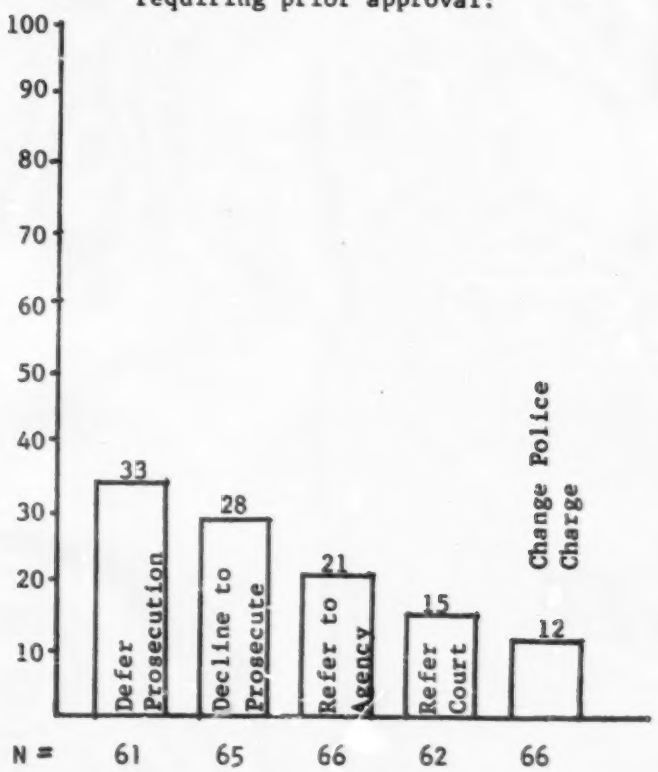
7. What is brought over routinely:



8. Who is talked to routinely before filing:



9. Percent of screening decisions routinely requiring prior approval:



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C-2. Intake For Those Jurisdictions Not Reviewing Felony Charges Before Filing

1. How long after arrest until notification? N=15

W/in 24 hours	43%
W/in 1 week	28%
More than 1 week	28%

2. How often is it necessary to request police reports? N=12

Routinely	50%
Seldom	50%

3. After receiving complaint, when is next scheduled court appearance? N=12

W/in 24 hours	8%
W/in 1 week	42%
1-4 weeks	33%
More than 1 month	17%

4. Percent of cases dismissed or nolled at next court hearing N=12

Median	10%
Range	1%-50%

5. Percent of cases referred to lower court N=8

Median	10%
Range	1%-60%

6. Identifiable unit with review responsibility? N=14

Yes	71%
No	29%

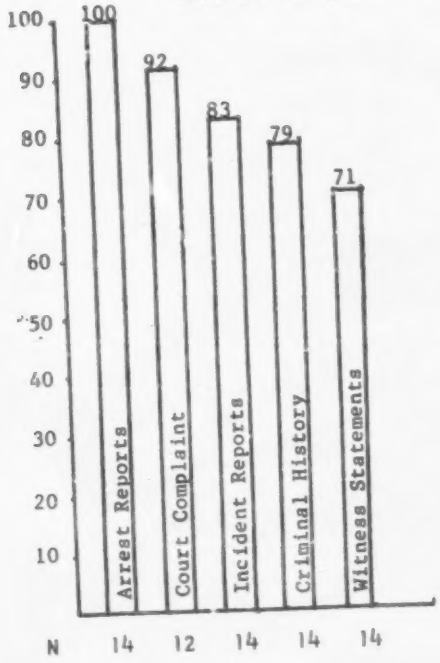
7. How often are assistant prosecutors aware of disposition? N=11

Routinely	36%
Seldom	64%

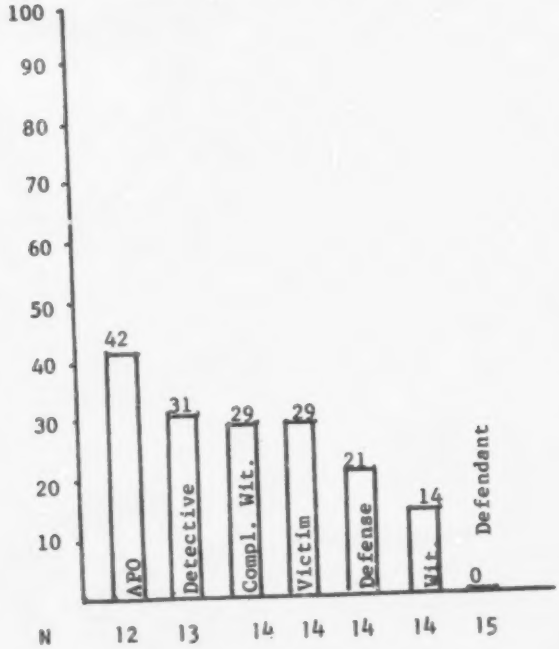
8. How often are assistant prosecutors aware of sentence imposed? N=11

Routinely	27%
Seldom	73%

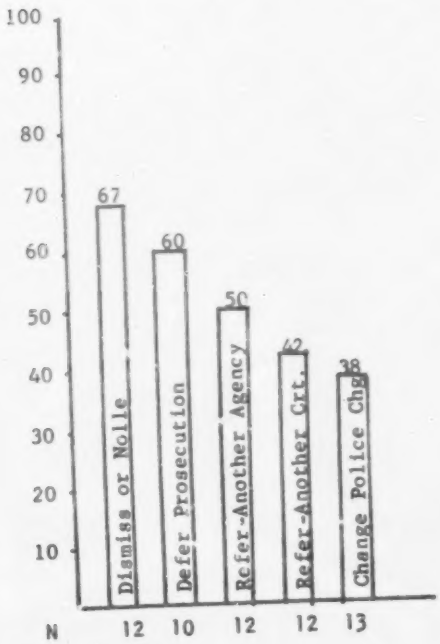
9. What is routinely available for the next court appearance:



10. Who is talked to routinely before the next court appearance:



11. Decisions requiring written justification:



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D. Accusatory Phase

1. Types of Accusatory Processes Used:

GJ = Arrest to grand jury
PH = Arrest to preliminary hearing to filing information
PH/GJ = Arrest to preliminary hearing to bindover for grand jury
INFO = Arrest to direct filing of information

PERCENT DISTRIBUTION OF JURISDICTIONS BY TYPE OF ACCUSATORY PROCESS USED IF FELONIES ARE REVIEWED AT INTAKE - N=67

Most Often	Often GJ	PH	PH/GJ	INFOR
GJ	4	2	2	
PH	5	42		
PH/GJ		2	3	
INFO	5	3		26

PERCENT DISTRIBUTION OF JURISDICTION BY TYPE OF ACCUSATORY PROCESS IF FELONIES ARE NOT REVIEWED AT INTAKE - N=12

Most Often	OFTEN GJ	PH	PH/GJ	INFOR
GJ	17			
PH				
PH/GJ	25	17	33	
INFO				

FELONIES

		Review N=67	No Review N=12
2. How long is it from arrest to preliminary hearing for jail cases?	Median	10 days	10 days
	Range	1-45 days	1-120 days
3. How long is it from arrest to preliminary hearing for bail cases	Median	14 days	14 days
	Range	1-75days	1-120 days
4. Percent of cases dismissed at preliminary hearing	Percent Dismissed		
	0-7%	40%	38%
	8-13%	33%	24%
	14-27%	17%	38%
	28-100%	10%	0%
	Range	0-50%	5-20%
5. Percent of cases reduced for misdemeanor processing at preliminary hearing	Percent Reduced		
	0-7%	52%	13%
	8-13%	12%	0%
	14-27%	21%	50%
	28-100%	14%	37%
	Range	0-46%	5-70%
6. Percent of cases disposed by plea at the preliminary hearing	Percent Disposed		
	0-7%	51%	63%
	8-13%	15%	12%
	14-27%	17%	12%
	28-100%	17%	12%
	Range	0-100%	0-50%
7. Percent of cases boundover at the preliminary hearing	Percent Boundover		
	0-7%	2%	13%
	8-13%	7%	0%
	14-27%	7%	0%
	28-100%	84%	87%
	Range	0-100%	3-71%

FELONIES

		Review	No Review
8.	Percent of jurisdictions where:	N=67	N=12
	Courts may take plea to a felony at preliminary hearing	55%	13%
	Preliminary hearing is the same day as bond hearing	7%	11%
	Preliminary hearing an ex parte procedure	4%	0%
	Preliminary hearing a mini-trial	23%	44%
	Preliminary hearing used to restrict liberty	34%	50%
	Preliminary hearing used to bindover for trial	90%	100%
	Preliminary hearing to restrict liberty and bindover	100%	100%
9.	Percent of jurisdictions where approval is routinely needed:		
	For plea offers	52%	44%
	For dismissals or nolles	63%	44%
	For prosecution as misdemeanors	58%	44%
10.	How many preliminary hearings were conducted last year?		
	Median	907	1500
	Range	4-21560	25-12000
11.	Percent of grand jury indictments handed up		
	Median	75%	92%
	Range	8-100%	9-100%
12.	How long is it between arrest and grand jury indictment for bail cases?		
	Median	24 days	38 days
	Range	10-183 days	21-90 days
13.	How long is it between arrest and grand jury indictment for jail cases?		
	Median	21 days	30 days
	Range	2-183 days	14-60 days
14.	Frequency of trial assistants reviewing cases pending grand jury indictment		
	Routinely	62%	11%
	Seldom	38%	89%
15.	Frequency of assistant presenting to grand jury and trying case		
	Routinely	44%	10%
	Seldom	56%	90%

E. Trials Phase

1. Docket Controlled by:

	Initial	Subsequently
	N=77	N=76
Police	1%	0%
Prosecutor	21%	16%
Courts	78%	84%

2. Timing of case assignments to:

	Trial Judges	Assistants
	N=73	N=79
Before arraignment	31%	48%
At arraignment	37%	33%
After Motions	31%	19%

3. Pretrial conferences routinely scheduled: N=79

Yes	68%
No	32%

4. Motions disposed before trial? N=79

Yes	90%
No	10%

5. No reduced plea or cutoff date: N=78

Yes	44%
No	56%

6. Number and type of dispositions:

TYPE	MEDIAN	RANGE	N=69
Plea	1300	90-11952	
Jury Trial	134	3-987	
Non-jury Trial	22	0-2274	
Dismissals/nolles	170	0-4954	
Other	0	0-667	
TOTAL	1700	100-17345	

7. Process Point and frequency where cases are disposed N=81

	Median Percentage
At arraignment	1
Between arraignment and trial	50
1st day of trial	5
End of trial	10

8. Evidentiary strength of cases brought to trial: N=76

Marginal	34%
Strong	63%
Very-strong	3%

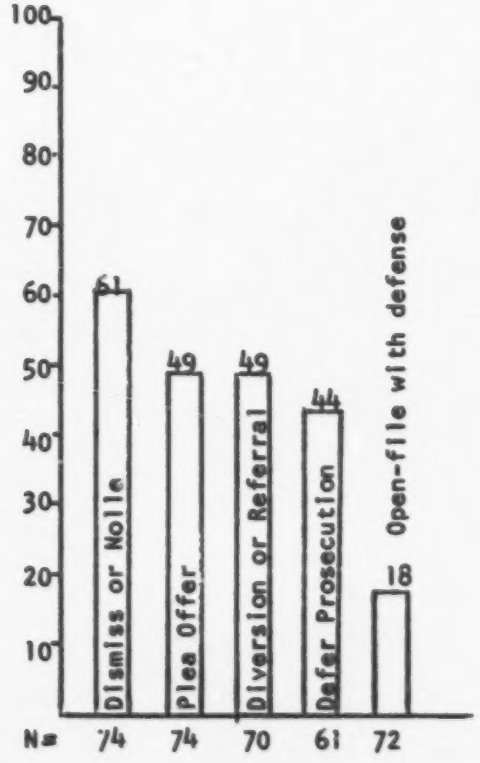
9. Stage where most pleas occur: N=79

Before arraignment	1%
At arraignment	9%
After arraignment	73%
During trial	16%

10. Discretion routinely allowed trial assistants to:

Negotiate pleas	73%	N=79
Use open-file policy	71%	N=79

11. Prior approval routinely needed by trial assistants for:



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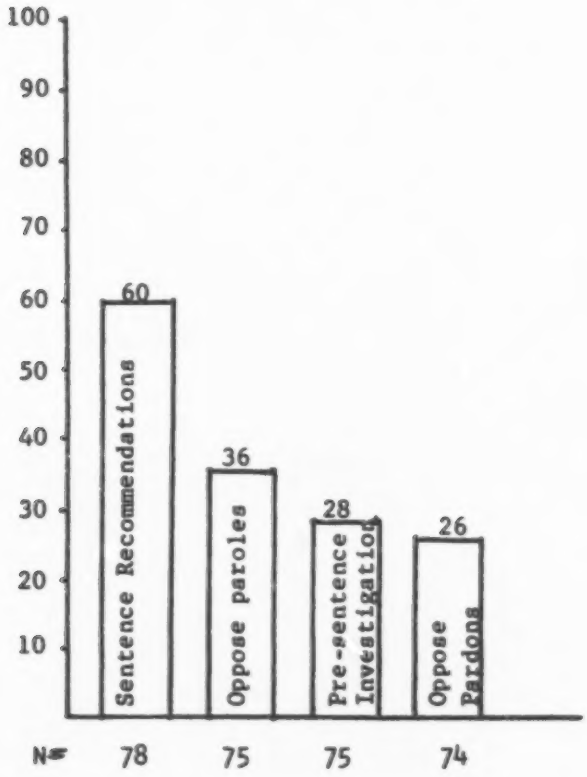
F. Post-conviction Phase

1. Office Post-conviction participation:



BEST DOCUMENT AVAILABLE

APPENDIX B

SURVEY INSTRUMENT

CRIMINAL JUSTICE SYSTEM FACTS

Purpose

The purpose of this section is to describe the criminal justice system environment within which the prosecutor works.

Notes:

Unless otherwise specified, all questions relate to routine case processing procedures.

When frequencies are asked for by questions starting with "How often," generally the responses should be categorized and interpreted as follows:

Never - use is precluded, or not available under any circumstances.

Sometimes or rarely - only used on an exceptional basis, infrequently occurs, once in a while.

Usually - most of the time, routinely done this way.

Always - this is mandated, no other options, alternatives or exceptions are even available.

Questions

I. What is the population of your jurisdiction? _____

1. How many police agencies work with your jurisdiction? _____

2. What police agency brings in the largest number of arrests? _____

3. What percent of your workload is this? _____%

4. Does this largest agency have access to a centralized booking facility?

_____Yes _____No

5. Is there a single court system having both misdemeanor and felony (or equivalent) jurisdiction? _____ Yes _____No

6. How many trial courts (felony and misdemeanor) does the prosecutor man and in how many locations?

   a. Number manned _____

   b. Number of locations _____

7. How many judges are assigned to:

   a. The lower court _____

   b. Felony trial court _____

   c. All courts, if not divided _____

8. How many judges regularly sit criminal in:

   a. The lower court _____

   b. The felony trial court _____

   c. All courts, if not divided _____

9. How many days a week does each judge sit? (Exclude first appearances)

   a. Lower: _____

   b. Felony: _____

10. On any day that a trial judge sits criminal, does he also hear civil matters?

    _____Yes _____No

11. What type of docketing system is used for felonies?

    a. Individual docket ☐

    b. Master calendar ☐

    c. Other (specify): ☐

12. How would you characterize the court's continuance policy ranging from:

    a. Strictly controlled ☐

    b. Available within reason ☐

    c. Liberal ☐

13. Does the felony trial court have a backlog?

14. If yes, how often does this present problems to you?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

15. Does the court have a speedy trial rule?

    _____Yes _____No

16. If yes, how often does this present problems to you?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

17. What proportion of indigent defense services are provided for by:

	Felony	Misdemeanor
a. Public defenders	_____%	_____%
b. Contract defense services	_____%	_____%
c. Assigned counsel or court appointed	_____%	_____%

18. Are the attorneys who provide the indigent defense services allowed to maintain a private practice?

	Yes	No
a. Public defender	☐	☐
b. Contract defense counsel	☐	☐
c. Assigned or court appointed	☐	☐

19. Which of the following laws or procedures does your jurisdiction have?

	Yes	No
a. Trials de novo	☐	☐
b. Discovery	☐	☐
c. Minimum sentence legislation	☐	☐
d. Habitual or multiple offender acts	☐	☐
e. Statutory sentencing enhancements	☐	☐
f. Determinate or flat sentencing	☐	☐
g. Indeterminate	☐	☐
h. Consecutive sentencing	☐	☐
i. Jury sentencing	☐	☐
j. Post-conviction restitution	☐	☐
k. Expungement	☐	☐
l. Is there anything else?	☐	☐
m. If so, please specify:	☐	☐

1. _____
2. _____
3. _____
4. _____

20. How often are the following laws or procedures used when they are applicable?

	Always	Usually	Sometimes	Never
a. Habitual or multiple offender acts	☐	☐	☐	☐
b. Statutory sentencing enhancements	☐	☐	☐	☐
c. Post-conviction restitution	☐	☐	☐	☐
d. Expungement	☐	☐	☐	☐

21. How many felonies were either referred to your office or brought over for prosecution last year? _____

22. What are the three most prevalent felonies prosecuted in this jurisdiction?

a. _____

b. _____

c. _____

23. For our purposes, we need to know how dispositions are counted in your office?

a. Defendant bases ☐

b. Court cases (may include multiple defendants) ☐

c. Other (specify): _____ ☐

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OFFICE FACTS

Purpose:

The purpose of this section is to determine the size of the office and some of its general organizational and jurisdictional characteristics.

Notes:

With respect to employees, be sure to include all persons currently employed on special programs or grants.

Assistants refer to all attorneys including supervisory attorneys, excluding only the chief prosecutor.

Questions

1. How many years has the chief prosecutor held this position? _____

2. How many persons are employed full-time by the office (defined as on the office payroll)? _____

3. How many assistant prosecutors are employed in the office? _____

4. How many assistants are:

   a. part-time _____

   b. full-time _____

5. Do assistant prosecutors maintain a private practice? ____All ___Some ____None

6. Does the office have access to investigators? _____Yes _____No

7. If yes, how many are:

   a. employed by the office_____

   b. detailed to the office_____

8. What type of personnel system exists for assistants:

   a. serve at the pleasure of the prosecutor ☐

   b. civil service ☐

   c. merit ☐

   d. other (specify): _____ ☐

9. Are the assistants members of a union? _____Yes _____No

10. With respect to the experience level of the assistants, how many have:

	Number or Percent
a. less than one year's experience	
b. about one to four	
c. over four	

11. Excluding supervisory and administrative assistants, what is the average length of stay in the office for attorneys? Months _____

12. What is the assistants':

a. starting salary $_____

b. maximum salary $_____

12(aa). What is the prosecutor's salary? $_____

12(bb). Does it include supplements? (Y/N)_____

12(cc). If yes, State___or Local?_____

13. What is the last appropriated annual budget for the office (Exclude grant funds) What year?

$_____ _____

14. If your office receives grant funds, what was the amount for that year?

$_____

15. Does the office maintain and support branch offices? ___Yes ___No

16. If yes, how many branch offices are there? _____

17. Does the prosecutor have jurisdiction over the following matters?

Area	Yes	No
a. misdemeanors	☐	☐
b. juvenile	☐	☐
c. moving violations in addition to traffic	☐	☐
d. appeals	☐	☐
e. civil	☐	☐
f. anything else	☐	☐

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g. If yes, please specify:

1. _____

2. _____

3. _____

4. _____

18. Does the office participate in any of the following programs:

	Yes	No	Check if Federally Funded
a. diversion	☐	☐	☐
b. child support enforcement	☐	☐	☐
c. citizen complaints	☐	☐	☐
d. drug, alcohol or other	☐	☐	☐
e. career criminal or major offense bureaus	☐	☐	☐
f. victim/witness programs	☐	☐	☐
g. white collar crimes and economic crimes	☐	☐	☐
h. consumer fraud	☐	☐	☐
i. rape or sex abuse programs	☐	☐	☐
j. arson	☐	☐	☐
k. crimes against elderly	☐	☐	☐
l. street crimes	☐	☐	☐
m. organized crime	☐	☐	☐
n. anything else	☐	☐	☐
o. If yes, please specify:	☐	☐	☐

1. _____

2. _____

3. _____

4. _____

19. Does the office have a policy or procedures manual setting out either standards or guidelines for charging? _____Yes _____No

20. Name the major organizational divisions in the office and the number of assistants assigned to them. (Use the space below)

Division Name	Number of Assistants (including chiefs)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	

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INTAKE

Purpose:

The purpose of this section is to determine the type of intake and accusatory procedure used by the office, the characteristics of the charging process amd management controls surrounding the discretionary authority of the assistants.

Notes:

All the questions in this section refer to cases that resulted from felony (or equivalent)arrests, and are to be handled routinely. Cases handled specially in separate programs should not be included here.

Questions:

1. Does the office have an opportunity to review the police charges before they are filed in the court?

   a. For felonies _____Yes _____No

   b. For misdemeanors _____Yes _____No

If yes for felonies, complete pages J11 - 12.

If no for felonies, complete pages J13 - 15.

DO NOT COMPLETE BOTH SECTIONS

YES

Prosecutor reviews police arrests charges before filing

2. How often are cases brought over by:

	Most Often	Often	Rarely or Never
a. arresting officer	☐	☐	☐
b. detective	☐	☐	☐
c. courier or batched	☐	☐	☐
d. other (specify)	☐	☐	☐

3. How often are the following written reports received when appropriate:

	Always	Usually	Sometimes	Never
a. incident/offense/complaint	☐	☐	☐	☐
b. arrest report	☐	☐	☐	☐
c. detective report	☐	☐	☐	☐
d. criminal history	☐	☐	☐	☐
e. witness statements or testimony	☐	☐	☐	☐

4. Before filing, how often does the charging assistant talk to the following:

	Always	Usually	Sometimes	Never
a. arresting police officer	☐	☐	☐	☐
b. detective	☐	☐	☐	☐
c. victim/complaining witness	☐	☐	☐	☐
d. other witnesses	☐	☐	☐	☐
e. defendant	☐	☐	☐	☐
f. defense counsel	☐	☐	☐	☐
g. investigator	☐	☐	☐	☐

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5. What percent of the cases are declined for prosecution? _____%

6. Generally, how long after arrest is it before you file charges? _____

7. Is there an identifiable organizational unit, i.e. an intake unit, that has the charging responsibility?

_____Yes _____No

8. How many assistants are assigned for screening and charging decisions:

a. total number _____

b. on a rotating or duty basis _____

c. on a permanent basis _____

d. as available _____

e. other (specify) _____

9. How many have:

a. less than a year's experience _____

b. one to four years _____

c. over four years _____

10. How often do any of the following screening decisions require prior approval?

	Always	Usually	Sometimes	Never
a. decline to prosecute	☐	☐	☐	☐
b. change police arrest charge	☐	☐	☐	☐
c. refer case to another court	☐	☐	☐	☐
d. refer case to another agency or treatment program	☐	☐	☐	☐
e. defer prosecution or place on stet file or docket	☐	☐	☐	☐

11. How often are the charging assistants aware of the dispositions (not necessarily the sentence imposed) of the cases that they send forward for felony prosecution?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

12. How often do they know the sentences imposed?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

NO

Prosecutor does not review cases before they are filed in the court

2. How long after arrest do you find out about the case? _____

2. How often do you have to request police reports to review and prepare the case?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

4. How often are the following documents available for the next scheduled court appearance?

	Always	Usually	Sometimes	Never
a. police offense/incident/complaint	☐	☐	☐	☐
b. arrest report	☐	☐	☐	☐
c. criminal history	☐	☐	☐	☐
d. court complaint and warrant	☐	☐	☐	☐
e. witness statements or testimony	☐	☐	☐	☐
f. other (specify)	☐	☐	☐	☐

5. After you receive the complaint and warrant how much time do you have before the next scheduled court appearance? _____

6. What is that appearance called? _____

7. Prior to this appearance, how often do you talk to or interview the following:

	Always	Usually	Sometimes	Never
a. arresting officer	☐	☐	☐	☐
b. detective	☐	☐	☐	☐
c. complaining witness	☐	☐	☐	☐
d. victim	☐	☐	☐	☐
e. other witnesses	☐	☐	☐	☐
f. defendant	☐	☐	☐	☐
g. defense counsel	☐	☐	☐	☐

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8. What percent of the cases are:

   a. dismissed or nolled at the next court hearing _____%

   b. referred down to the lower court _____%

9. Is there an identifiable organizational unit that has this screening and review responsibility? _____Yes _____No

10. If yes, how many assistants are assigned to this unit?_____

11. How many assistants performing this function have:

   a. less than one year's experience _____

   b. one to four years _____

   c. over four years _____

12. How are assistants assigned to this screening duty:

   a. total _____

   b. on a rotating or duty basis _____

   c. on a permanent basis _____

   d. as available _____

   e. as part of their trial assignments _____

   f. other (specify) _____

13. How often do any of the following decisions require written justification?

	Always	Usually	Sometimes	Never
a. dismiss or nolle case	☐	☐	☐	☐
b. change the police arrest charge	☐	☐	☐	☐
c. refer case to another court	☐	☐	☐	☐
d. refer case to another agency or treatment program	☐	☐	☐	☐
e. defer prosecution or place on stet docket or file	☐	☐	☐	☐

14. How often are the charging assistants aware of the disposition (not sentences) of the cases that go forward for felony prosecution?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

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15. How often do they know what the sentences are?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

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Accusatory

Purpose:

The purpose of this section is to identify the type of accusatory process used, and if preliminary hearing, its nature and character. It also determines the extent to which the accusatory process is used as a major dispositional point or is a delay mechanism in the prosecution process.

Note:

If either the preliminary hearing or the grand jury are not used, do not complete appropriate section.

Questions:

1. How often do you use the following types of accusatory processes?

	Most Often	Often	Rarely or Never
a. arrest to grand jury	☐	☐	☐
b. arrest to preliminary hearing	☐	☐	☐
c. arrest to preliminary hearing to bindover for grand jury	☐	☐	☐
d. arrest to direct filing of information	☐	☐	☐

2. How long after arrest is a case scheduled for preliminary hearing (grand jury)?

   a. jail cases _____

   b. bail cases _____

ABOUT PRELIMINARY HEARINGS

3. How many preliminary hearings were conducted last year? _____

4. What number or percent of cases were:

	Number or Percent
a. dismissed	
b. reduced for misdemeanor processing	
c. disposed of by plea	
d. boundover	

5. Does the court have jurusdiction to take a plea to a felony at the preliminary hearing? _____Yes _____No

6. Is the preliminary hearing held on the same day or jointly with hearing to set bond and/or appoint counsel? _____Yes _____No

7. If no, generally how long after that first appearance is the preliminary hearing scheduled? _____

8. Is the preliminary hearing an ex parte procedure?

9. How often are the preliminary hearing mini-trials?

Most Often	Often	Rarely or Never
☐	☐	☐

10. Is the preliminary hearing held to determine probable cause to:

	Yes	No
a. restrict the liberty of the defendant	☐	☐
b. bindover for trial	☐	☐
c. both of the above	☐	☐

11. How often do the following decisions need approval or written justification:

	Always	Usually	Sometimes	Never
a. plea offer	☐	☐	☐	☐
b. dismissal or nolle	☐	☐	☐	☐
c. prosecution as misdemeanor	☐	☐	☐	☐

12. What division handles preliminary hearings? _____

13. How many assistants routinely conduct preliminary hearings? _____

14. How often does the assistant who eventually tries the cases as a felony handle the preliminary hearing?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

ABOUT GRAND JURY

15. How many cases were sent to the grand jury last year? _____

16. How many indictments were handed up? _____

17. How often does the grand jury meet?

    a. daily _____

    b. weekly _____

    c. monthly _____

    d. other (specify) _____

18. How long is it from arrest to grand jury indictment for:

    a. jail cases_____

    b. bail cases _____

19. How often do the following decisions need prior approval?

	Always	Usually	Sometimes	Never
a. recommendation of no true bill	☐	☐	☐	☐
b. recommendation of reduction to a misdemeanor and transfer	☐	☐	☐	☐

20. What division in your office handles grand jury presentation?_____

21. How many assistants routinely present cases to the grand jury? _____

22. How often do felony trial assistants review cases while they are still pending grand jury indictment?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

23. How often does the assistant who eventually tries the case handle the presentation to the grand jury?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

Trials to Disposition (Does Not Include Sentencing)

Purpose:

The purpose of this section is to determine the relationship between the different types of docketing systems and the prosecutor's organizational response; the prevalence of the use of certain trial strategies such as plea bargaining, discovery and dismissals or nolles, and to identify the amount of discretion permitted the trial assistant.

Note:

Questions refer to the routine processing of felony cases, special handling of other types of cases should be excluded from these responses.

Questions:

1. Who controls the docket for:

	Police	Prosecutor	Courts
a. initial trial setting	☐	☐	☐
b. subsequent settings	☐	☐	☐

2. When are cases generally assigned to trial judges (or courts)?

   a. before arraignment_____

   b. at arraignment_____

   c. after motions and/or pretrial conferences have been completed _____

3. When are cases assigned to trial assistants?

   a. before arraignment ☐

   b. at arraignment ☐

   c. after motions and/or pretrial conferences have been completed ☐

4. Are pretrial conferences routinely scheduled? ____Yes ____No

5. Are motions disposed of before the trial date? _____Yes _____No

6. Does the office have a no reduced plea or cut-off date after which offers are withdrawn? _____Yes _____No

7. How long after arraignment is the trial date set:

   a. for jail cases _____

   b. for bail cases _____

8. What percent of cases are continued on the first trial date setting?_____%

9. How many indictments or informations were disposed of last year by:

a. plea _____

b. jury trial _____

c. non jury trial _____

d. dismissals or nolles _____

e. other _____

f. total disposed _____

10. Of all dispositions, what percent of cases would you estimate are disposed of at:

a. arraignment _____%

b. after arraignment before trial _____%

c. first day of trial _____%

d. end of trial _____%

11. From an evidentiary perspective, how would you characterize the majority of cases that end up on trial?

a. marginal ☐

b. strong ☐

c. very strong ☐

12. Of all the cases disposed of by pleas, at what stage is this most likely to occur?

a. before arraignment ☐

b. at arraignment ☐

c. after arraignment before the scheduled trial date ☐

d. day of trial or during trial ☐

13. How often are the trial assistants allowed to negotiate pleas?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

14. How often do the trial assistants use an open file policy with defense counsel?

Always	Usually	Sometimes	Never
☐	☐	☐	☐

15. How often do the trial assistants need approval for the following actions:

	Always	Usually	Sometimes	Never
a. plea offer	☐	☐	☐	☐
b. open file practices	☐	☐	☐	☐
c. dismissals or nolle prosequi	☐	☐	☐	☐
d. diversion or referrals of case out of system	☐	☐	☐	☐
e. deferred prosecution or placement on stet docket	☐	☐	☐	☐

16. If a case goes to trial, how long does the average trial last:

	Jury Trial	Non Jury Trial
a. property crimes		
b. crimes against the person		

17. What is the average or median number of days from arrest to disposition (not including sentencing) for:

	Average or Median	
a. jail cases		
b. bail cases		

18. How many felony trial assistants have:

	Number or Percent	
a. less than one years experience		
b. one to four years		
c. over four years		

19. After a conviction, how often does the office participate in the following activities:

	Always	Usually	Sometimes	Never
a. presentence investigation	☐	☐	☐	☐
b. sentence recommendation	☐	☐	☐	☐
c. opposition to paroles	☐	☐	☐	☐
d. opposition to pardons	☐	☐	☐	☐

*U.S. GOVERNMENT PRINTING OFFICE: 1982--361-233/6356